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# THE PHYSICIAN;

His Relation to the Law.

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BLAINE

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**THE PHYSICIAN ;**  
**HIS RELATION TO THE LAW,**

AND

**THE LEGAL RULES GOVERNING THE COLLECTION  
OF HIS FEES.**

By H. G. BLAINE, A. M., M. D.,

LATE PROFESSOR OF DISEASES OF THE NERVOUS SYSTEM, TOLEDO MEDICAL  
COLLEGE, TOLEDO, OHIO; TEN YEARS EDITOR OF THE TOLEDO  
MEDICAL COMPEND; EDITOR BLAINE'S MEDICAL FOOT-  
PRINTS; MEMBER OF NORTHWESTERN OHIO  
MEDICAL ASSOCIATION; OHIO  
STATE MEDICAL SOCIETY; ETC., ETC.

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**THE PHYSICIAN;  
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## PREFACE.

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Medical Jurisprudence, the inter-relations of legal and medical science, is a department of medical text greatly neglected by the student and practitioner as well. A knowledge of the civil law, as applied to the physician engaged in the practice of his profession is essential. In addition to his citizenship as applied to his fellows without, he occupies a special sphere that must be governed by special laws. Too, he is accorded special protection by the same laws which govern him.

The object of this book is to give in a condensed form the relation of the physician to the special laws which control him, and with it a more extended knowledge of the Legal Rules which Govern the Collection of his Fees.

The Ethical Codes are of interest to all and are given without comment. A modification admitting of more freedom of thought and action may be commendable, but we hand them to the reader as they are to-day.

The Statutory Enactments in the various states, regulating the practice of medicine within the domain of each are the latest obtainable at this writing, and will be found as reliable as can well be made.

Many more points of interest are dispersed throughout, and every item is of known worth before it is ac-

corded space by the author or engrossed on the reader's time.

The Medico-Legal department is a subject requiring extensive personal investigation and authority and renders appropriate the quotations of several legal writers; this is the reason for the frequent quotations that are brought into use.

In addition to the above are given many points of interest of use to every physician without regard to his school of practice.

Free use has been made of the elaborate reference work of Albert H. Buck, M. D., and the writings of Abbot, Riley and others, to which due credit is here given and to whom obligations are here expressed.

Toledo, O., Jan. 1, 1896.

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# THE PHYSICIAN;

## His Relation to the Law.

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### PART I.—LEGAL RELATIONS, ETC.

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*Business Name; Partnership with others; Patient's Consent; Confidential Relation to his Patient; Charges of Slander; Malpractice; Wills; Authority in Emergencies; Law of Anæsthesia.*

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There are doctors and doctors. Those among whom are found physicians, and others. Doctors spring from many sources, while physicians do not. Every physician is a doctor but the reverse cannot be said to always hold true. The term *physician* carries with it some weight, some meaning, some dignity,—the word *doctor* less so. One is made, the other self-made.

The *M. D.* is the one with whom we have to deal in the following pages, and is what Webster terms as a “person skilled in healing; one duly authorized to prescribe for and treat diseases; a doctor of medicine.

Authority over medical law is not usually vested in the general government, but each state exercises the right to pass laws and to regulate the practice of medicine within its own domain. There are no general laws regulating the healing art passed by Congress, and as a consequence the various branches of practice becomes subject to the statute laws enacted by the Legislatures of the different commonwealths. These are different in different parts of the country.

In states where there are no medical laws it is presumed that any person may lawfully offer to render service in the treatment of diseases or wounds. It is generally conceded that no special apprenticeship is needed or exacted, and the practitioner, if he possesses the skill which he pretends, and exercises the same in rendering his services, and if the circumstances warrant a like understanding that there had been an agreement to pay for his attendance, can recover such compensation for his services as is considered to be just and reasonable. At this time there is about one-fourth of the states in the Union, the position of the law in which is, practically and substantially, as above stated. However, many of the states within a few years past have enacted laws regulating the practice of medicine within their boundaries, and it is to be presumed that others will follow as speedily as their predecessors, so that it will not be long till each state will possess a law of its own more or less precise and satisfactory.

Most States require every practitioner to pass an examination and to procure a diploma, license, or certificate of qualification from a medical college or society, or from an examining board which has been duly authorized by the State. Should he attempt to practice without this he may expose himself to a penalty, beside having no legal standing as a physician to sue for medical services rendered.

The law recognizes the fact that there are different schools of medicine, and does not endorse any one school to the prejudice of another, and in most States it aims at maintaining impartiality. The law presumes that a practitioner shall treat a patient in accordance with the tenets of the school which he espouses. This is the general doctrine, and the practitioner having the right, it is his duty to treat a patient according to the method which he professes to understand, and in accordance with his medical training. A practitioner who has faithfully followed the rules of his school, no matter how unsound and absurd they may be, cannot become subject to claims for malpractice, and claims for damages against him cannot be maintained. In Iowa, recently, a man's wife was taken sick and he called a botanic physician. The patient dying, the physician presented his bill, which was denied and payment refused. The case was litigated, and notwithstanding the fact many allopathic physicians testified that the treatment was injudicious and unwise, yet the court decided that the bill was a

just one and rendered judgment in favor of the plaintiff for the full amount of the services which he had performed. The general doctrine is, that each State makes judicious (presumed to be adequate) regulations, confiding to representative bodies the giving of licenses to practice in the different schools, and practitioners thus duly licensed stand on equal terms before the law, so far as their relation, rights and obligation toward patients are concerned. In illustration of this, a case is mentioned of a law suit between a manager and a member of his troupe. The contract was such, that a member in order to be excused from duty on account of illness must obtain a certificate from a physician, the selection of whom was to be left to the manager. A homœopathist was selected, and the member of the troupe refused to consult him on the ground that he was not a "regular," and employed another physician. He afterward sued for his salary, but the court decided against him and advised that "physicians of all schools of practice have come to be recognized equally as 'doctors' before the law, and the manager possesses the right and privilege, inasmuch as the contract does not specify the school, to select the one in whom he has the most confidence."

There are a few specific laws governing the course of physicians in  
**Business**  
**Name.** practice. The common expectation of society, and general usage of his fellows in the country govern him more than the code

of medical ethics. The law recognizes him the same as it does an ordinary individual, and he is entitled to recover from one who has employed him whatever that person has agreed to pay. If he should do an injury by his negligence or want of skill, he must pay damages. The nature of his calling is such that his offences are rendered peculiar to his vocation. However, circumstances will apply to him the same as to any person engaged in a different business.

To illustrate this, how unusual it would be for a physician to carry on his business under a fictitious name, though he has a perfect right to do so, if he so wishes. The only thing that would restrain him is his professional pride, for he has the same legal freedom as any other person.

The following case is of interest: Allison & Hearn is the name of a firm established in New York city some years ago to manufacture and sell a patent medicine. The firm existed for many years and the business became prosperous. During the above period there was a Dr. McAllister engaged in legitimate practice in the city of Brooklyn. He finally dying, it was found that "Allison" and "McAllister" were one and the same person. A question then arose with the postoffice authorities as to whether they were bound to deliver the Allison letters to the former partner, Hearn; but it was finally decided that it was not unlawful to use a fictitious name in cases where no fraud was involved. The physician had a perfect

right to use the two names, and the postoffice authorities were compelled to deliver the letters to Hearn. Hence it is shown that a physician has the liberty of a non-professional man in respect to almost all kinds of ordinary business conduct.

## Partnership

### with Others.

A physician's partnership is sometimes a little peculiar, and often rendered so by the limited nature of his business. If his partnership be the sale of drugs, medicines, etc., the relation involves the ordinary risks and liabilities of a commercial partnership; he owns his share of the stock, fixtures, etc., divides the profits and shares the losses. In cases where two or more physicians enter into partnership and their agreement is to divide their fees, they are bound to make their division as agreed, but one partner cannot make a contract that will impose any important liability upon the other, and should he be a surgeon, no ambassador of the law will be likely to advise a patient who may have suffered from the consequences of the surgeon's negligence, that he can maintain an action for damages against his partner.

Partnerships between physicians ordinarily involve simple friendly co-öperation, often intended solely to relieve the labors of the older member. In such cases no legal liabilities or consequences of any kind would be likely to be involved. Division of fees, and possibly an agreement to share the expenses is the ordi-

nary stipulation of co-partnerships between physicians, or physicians and surgeons.

Many law suits might be mentioned which have involved the patient's consent. Hence it is very important that the patient consents to receive the physician's or surgeon's services, otherwise it might be considered an assault. The term assault includes any use of force or violence upon the person of another against his or her consent, no matter how slight or harmless it may be. In case of a child the consent of its parents is sufficient. It is a familiar maxim that to the "consenting person no injustice is done," and the patient who has consented to treatment cannot afterward complain of it. The following case will show how little consent will suffice, and how near the dividing line it may come:

A few years ago, a case of reluctant obedience and arbitrary wrongful demand occurred in England. A house-maid was charged by her employer of being pregnant, in consequence of which she was dismissed. The girl denied it, but the lady called a physician and ordered the girl to submit to an examination. The girl protested, but finally went to her room, followed by the physician. She objected to his requirements, but still remonstrating, however, she obeyed and an examination was made, which proved the charge groundless and the girl innocent. She was

dismissed notwithstanding. The girl instituted suit against the physician for assault, the case resulting finally in his favor. The court decided that although the girl remonstrated, yet she went to her room and submitted to the examination without being forced, even though she remonstrated during the whole time; and that it appeared the examination did not take place, in a legal sense, without her consent, for it was not forcible compulsion which she was powerless to resist. She might have submitted through ignorance of her rights, but it could not be said that she did not submit, or even that she was forced to submit, by force, threat or fear. Often consent given in ignorance is, in some cases, made binding; however, consent procured by deception, of course, is not.

The confidential

**Confidential Relation**      character of the phy-  
                                                  sician to his patient  
**to His Patient.**      is of importance.

The extent and limit of duty in regard to secrecy of the patient's disclosures is, to a certain extent, treated by statute law. The statutory prohibition that "no physician, etc.," must be taken in its fullest sense. The physician must not tell his professional secrets, not simply because the patient has declared a communication to be a secret, and a professional matter only, nor because he so considers it, but because the statute says that he shall not. It is firmly established that the feelings of the patient

shall be protected not only while living but forever. If anything is to be told the patient should do the telling.

To illustrate how the relation of physician and patient is treated in law, we mention the following case: In Michigan a physician was summoned to attend a confinement, he invited an unmarried man to accompany him, who was neither a student or practitioner. The two went to the home and the young man took a very slight part in assisting the doctor. It was a dark, stormy night, the roads were almost impassable, and the doctor was greatly fatigued. The house contained but one room in which the patient lay, and there was no other in which the young man could wait. A suit for damage was finally brought against the doctor and his companion and was sustained, although there were many circumstances attending to make their conduct excusable, and even though both the woman and her husband consented that the young man might enter the sick room, still neither she or her husband knew when they consented that the volunteer was not a medical man.

Brouardel published an essay on "Medical Secrets" in the "*Nouveau Dictionnaire de Medicine et de Chirurgie*," and gives a brief history of the question of preservation of professional secrets, and quotes provisions of the codes which imposed damages, fine and imprisonment, on the members and various branches of the medical profession, including health

officers who disclose professional secrets, excepting where the law allows them to do so. The French law expresses these subjects more definitely than our own. It is often difficult to distinguish between cases in which it is desirable to protect the reputation, or interests of the patient against wanton disclosure of his confidential relations to his medical adviser, and cases which interest a third person, or the demands of criminal law. The law which compels physicians to make professional disclosures is subject to restrictions. These are those which common sense and policy impose, and disclosures may be made in necessary cases, or where a case is of such a nature requiring it. The proposed administration of such a statute is illustrated in the following case: A person by the name of Pierson had been indicted for the murder of one Withey, by poison. Withey was sick for some time from the effects of the poisonous drug, and was attended by a physician. Pierson was at the same time suspected of having administered the fatal dose. He was indicted for murder in the first degree. The physician was called as a witness to convict Pierson, and he was required by the district attorney to state what he saw and heard as to the patient's condition during the treatment. The opposite counsel objected, but his objection was overruled, and the doctor described the symptoms of poisoning by arsenic. The higher court sustained the decision of the lower court and stated that the statute was to be understood in a

sensible way, and should be administered only to protect the patient and the physician in a legitimate way, and not to shield the criminal. Hence it is obvious that the purpose is to enable the patient to make known his condition to his physician without fear of disclosure, which might annoy his feelings injure his character, or impair his standing while living, or disgrace his name when dead. The following case differs from the proceeding one in this fact, that the professional visit in the Pierson case was made to the victim himself, while in the following case it was made to the suspected criminal. A few years ago, early one winter morning the corpse of a man named Littles was found in the Genesee river below the Falls. Littles appeared to have been murdered the preceding night in a struggle that had taken place on the summit of a high bank, near the river. His body had been thrown over the bank. His assailant during the melee, had fallen from the bank also by some means, in such a way so as to receive serious injury. A few hours later in the day a man named Stout was seen wearing one arm in a sling, and bore severe scratches and marks of violence on his face. The fact that he could give no satisfactory explanation regarding his injuries excited suspicion. The face of his sister, the wife of Littles, also bore marks of violence, and similar bruises. He was placed under arrest. The following day his injuries were such as to require medical treatment and a physician was called to attend him. The purpose of

the physician who treated him seemed to be two-fold, to make a comparison of his condition with the facts which were steadily coming to light relating to his injuries, and the circumstances of a mysterious murder. Stout was finally brought to trial for the murder of Littles. In the trial the physician was asked to state what he observed as to the condition of the prisoner at the time of his first visit. Stout's counsel objected and the objection was sustained. The court decided that the purpose of the law was to give to physician and patient, the same rights and privileges as have, from early times, been accorded to attorney and client, even if it should extend to admissions of guilt.

The effect that may be attributed to the death of the patient in cases of this nature, is illustrated in the following case: Some years ago a will was contested on the grounds of the mental capacity of the testator. The physician who attended the testator during his last illness, at the time the will was made, was questioned as to what he had learned of the patient's condition. Surrogate Bradford, before whom the will was contested, allowed the question for the reason that the man being dead, there was no one left to claim the statutory privilege as a matter of right, and the physician was required to disclose all that seemed proper under the circumstances. In contrast with this case is a more recent decision by the New York Court of Appeals, in the case of Grattan, who made application for a policy upon his life to a Life Insur-

ance Company. In his application he was required to disclose the nature of his deceased mother's last sickness. To this he replied "intermittent fever after childbirth." Grattan died. Afterward the company learned that the assured had made a misstatement, and that the real cause of his mother's death was consumption. The policy was contested, and the company sought to prove their case by the doctor who had attended the mother during her last illness, but was informed by the court that this could not be allowed. That the statute operated between the physician and his patient whenever the relation existed, and the object of the law was to compel secrecy as to any information that may have been acquired by the physician in attending his patient. This was construed to embrace what the physician learned by observation as well as what he was told. The death of the patient does not sever the relation in such a sense as to release the privilege, and the seal of confidence must remain until removed by the patient himself.

Questions of Slander have caused many law suits. What spoken words are regarded as legally injurious in the eyes of the law? Libel is construed to imply aspersive, ridiculous, or defamatory matter, whether it be falsely and maliciously published in writing or printing. This does not apply to physicians more than to non-professional persons, and does

not need any special mention. Slander, shown in whatever light, and aspersive or ridiculing words are not subject to action when merely oral unless a crime is charged, or a contagious disease is imputed or the person in respect to his skill or honesty in his profession or trade, should be defamed. Some special pecuniary damage actually must be caused as applied to physicians and surgeons. Ogers remarks that "any words imputing to the practicing medical man misconduct or incapacity in the discharge of his professional duties are considered slanderous and they are actionable for damages." A few years ago a suit for damages was sustained against a physician for calling a homœopathist a "quack." The decision rendered by court was that lawfully qualified and licensed practitioners were entitled to respect as such, whatever their schools; should a practitioner fail to formally qualify himself, the court would not entertain a complaint for damages, even though he should be so unfortunate as to be called a "quack." The law protects only lawful employments.

In cases where charges are made against a physician for seduction, adultery or the like, the question would be whether the woman involved was his patient or not. Could it be proven that professional confidence was used to induce, or decieve her, it would be considered misconduct in the professional character. However, if the aspersive remarks were true, or even though they be untrue, if they were uttered in good faith by a

person who had an interest in knowing the physician's character a suit for damages could not be maintained.

Malpractice can only be affirmed

**Malpractice.** where the physician has set aside principles established in the school of which he professes to be a member and neglected to employ the means which are usually employed by respectable physicians of his class and locality under similar conditions. It is a difficult matter to define civil malpractice, that is, malpractice that would render the person who commits error and negligence in the treatment of a case, subject to damages. Cases of malpractice should be of two kinds, viz : criminal prosecution, and civil action for damages.

Every person who enters into a learned profession undertakes to bring to the exercise of it a reasonable degree of care and skill. This is substantially the law as given by Chief Justice Tyndall in the celebrated case of *Lanphier vs. Phipos*. He does not, if he is an attorney, undertake at all events to gain the cause ; nor does a surgeon undertake that he will perform a cure ; nor does the latter undertake to use the highest possible degree of skill, as there may be persons of higher education and greater advantages than himself, but he undertakes to bring a fair, reasonable and competent degree of skill. And in an action against him by a patient, the question for the jury would be whether the injury complained of must be referred to

the want of proper degrees of skill and care in the defendant or not. Hence he is never presumed to engage extraordinary skill or extraordinary diligence and care. It is required that the physician must possess the ordinary skill and knowledge of his time in relation to his profession, and he must also exercise that skill and knowledge, for cases of malpractice may result from ignorance, from stupidity, or from recklessness. The physician is not held responsible for errors in judgment in diagnosis and treatment unless such errors should be so great as to imply professional ignorance and carelessness."

In the case of *Rich vs. Pierpont*, the court stated: "To render a medical man liable even civilly for negligence, want of due care and skill, it is not enough that there has been a less degree of skill than some other medical man might have shown. or less degree of care than even he himself might have bestowed; nor is it enough that he himself acknowledges some degree of want of care; there must have been a want of competent and ordinary care and skill, and to such a degree as to have led to a bad result.

"The diligence and skill required are reasonable, and ordinary skill and diligence, such as are manifested or possessed by the profession as a body, not in the highest degree, not in a degree which is possessed only by the most eminent of the profession. Physicians can not warrant a recovery for their patient, but if, however, a physician should foolishly warrant a cure,

or make a contract whether oral or written to that effect, and should he fail to do so the contract will be broken and no compensation will be allowed him even should it be shown that the failure to recover was not owing to the want of his skill and care."

The physician "should be liable to punishment if in a given case he departs entirely from the treatment which the majority of physicians of his time adopt in such cases," and "is in conflict with general rules prescribed for similar cases by contemporary science and adopted in contemporary medical experiences." It is easy to see that this definition includes, when taken in its literal meaning, the employment of every new remedy, or new mode of treatment, no matter how valuable it may be, for there are no advances in medicine but what are so made by running counter to the majority of contemporary authorities. The treatment of fevers which is now commonly adopted by physicians would have been condemned by the courts as susceptible to malpractice a few years ago. It would seem from this that the developement of medical science would come to a stop should this rigorous standard of malpractice be adopted, but still, slight reflections only is required to show this to be true. The law should be construed to mean that departures from the ordinary contemporary method of practice should be considered, in a sense, instances of malpractice unless they should be justified by the event. Should the physician or surgeon strike out a path for

himself, he does so at his own peril, should he be so fortunate as to succeed, he will then be considered a benefactor to his race ; however, should he fail, then he must become liable for damages to his patient. This rule may seem unjust and unreasonable, even hard, but it is salutary notwithstanding. Were it not so, conceited, unprincipled and reckless practitioners might bring havoc upon the laity by their bizarre treatment and alleged sincerity of motives. Gross ignorance and culpable evil motives might be covered up under the pretense of a new idea as to the true method of procedure.

A case like the following, however, would be justified even should it result unfortunately for the patient. Should physicians who are competent testify in evidence in the matter that a new step in medicine or surgery, even should it never be heard of, was justifiable on a-priori grounds, so that a physician might believe in its efficacy should its nature be suggested to him, so far as he could do so without trial—In a case like this the employment of a new course would not be constituted malpractice even should it fail where the ordinary remedies would have succeeded.

A physician who undertakes to perform services for another though it be gratuitously and at his own suggestion will be held liable for ordinary negligence, that is, the negligence that a man of ordinary skill and prudence would avoid. To define this more fully a

professional man is held liable, but a layman is not held liable for ordinary negligence in the treatment of the patient. This is amusingly illustrated in the story of a man who had sore eyes and went to a horse doctor for relief ; the doctor anointed his eyes with the same ointment he used among his horses, upon which the man became blind. A suit for damages followed, but the physician was acquitted. "For" says the court, "had the fellow not been an ass he never would have applied himself to a horse doctor." These decisions do not include cases where laymen undertake to perform services officiously, preventing the employment of a physician and representing themselves as possessing for the matter in hand, a skill which they really lack. In such cases the agent would be held liable for ordinary negligence and should his treatment result in the patient's death, should the case be an aggravated one, be convicted of manslaughter. So it is, should the result of the treatment by a legal practitioner through gross negligence result in death, it is a settled fact that the attending physician or surgeon might be prosecuted for murder or manslaughter.

In Massachusetts a midwife was prosecuted for negligently treating the eyes of a newly born child, so that it finally became blind. Three days after its birth the child suffered from inflammation of the eyes ; the services of a physician was proposed but the mother was dissuaded by the midwife, who stated that the doctor's washes would burn out the eyes of the child.

She stated that she had cured the same disease in other cases, and that as it was only a slight matter she could do so in this one. She treated the eyes with her own remedies which consisted chiefly of rose water, egg and sugar. In a few weeks the child was totally blind, and it was proven by medical witnesses that the disease was purulent ophthalmia, and could have been cured had the proper remedies been applied. The defendant was discharged. The decision, or the court's charge to the jury, was substantially as follows: That the midwife's statement that she could cure the child was but the expression of opinion as to the use of the higher skill of the medical profession which is required in the treatment of complicated and delicate organs. The only question was, did she discharge the duty which she assumed with the skill she professed to have, and with the diligence which might reasonably be expected of her. Under the rule requiring ordinary care there was no evidence of negligence in any degree, however.

A physician must apply the skill and learning which belongs to his profession, and other persons may exercise the skill and diligence bestowed by persons of like qualifications under like circumstances. Hence, on the contrary, it would be to charge responsibility upon, or incur liability for mistakes made in the performance of kindly acts for the sick and unfortunate.

Actionable negligence is qualified by the existence, sometimes, a particular circumstances, the most im-

portant one is contributory negligence on the part of the patient. The law is that a patient can not recover damages for his own negligence or when disobedience is partly the cause of the injury, even should the physician also be negligent ; but can it be shown that the negligence of the physician can be separated from that of the patient, then the physician is to that degree responsible for damages.

However, should it be shown that the patient had not been negligent, and that the physician alone was negligent, and as a result the injury followed, then the physician is liable for the result. In case the patient refuses to allow an operation by another physician for the repair of an injury inflicted by the attending physician, it is not contributory negligence unless there could be reason of insurance for the success of the operation. The patient may be negligent in refusing the opportunity, but it does not preclude his recovery of damages from the physician.

Contributory negligence can not be imputed to minors, insane persons and drunkards, generally speaking. In every case the question must be settled whether the patient possessed sufficient capacity to understand and control his actions in respect to his injury, or disease, and the treatment prescribed. Should the physician inadvertently place in the hands of such a patient a dangerous, or poisonous medicine, accompanied by proper instructions, and he subsequently takes an over-dose and is poisoned, contributory

negligence could not be proved, unless it could be shown that the mental capacity of the patient was sufficient, notwithstanding, his youth, insanity or negligence to warrant the physician in trusting him with the medicine. In cases where parents or attendants are imputed with negligence on their part instead of the patient, and not through an oversight or mistake on the part of the physician, then contributory negligence may be established with the same effect as if it were the negligence of the patient himself. No matter what the mental capacity of the patient may be, if the injury sustained is due to the negligence of the physician he may recover damages against him, although the injury may have been aggravated by careless nursing on the part of the parent or attendants. This is illustrated fully in the case of an insane person, in the case of *People vs. New York Hospital*, (3 Abb, N. C., 229), and also in the case of a drunken man in the *Illinois Central Railroad Co. vs. Hutchinson*. (47 Ill., 408).

After all it is a general principle of law, that though there should be contributory negligence on the part of the plaintiff, he may notwithstanding, recover damages, should there be wilful and intentional negligence on the part of the physician. To illustrate this, the driver of a carriage who deliberately runs over a footman is not absolved by the fact that the pedestrian was negligent in the time and place which he chose to cross the road. A surgeon who would cut off a man's leg

with a jack-knife when better instruments were at hand, and although the patient might contribute to the evil effects by drinking and dissipation, still the surgeon would be held for damages for his negligence.

Should the physician hold himself out as a Homœopathic or Botanic doctor, it would be necessary for him to show that his treatment was in accordance with the teachings of the school which he spoused. This rule is very obvious and is another qualification of the general rules as to what constitutes malpractice, and shows that a physician should be judged only by the principle of the school to which he belongs.

Another important principle is, that physicians of the city and country should not be tried by the same standard. Skill and energy which are ordinary in the city would be extraordinary in the country. In "Wharton on Negligence" in section 734, it is said: "In a city there are many means of professional culture which are inaccessible in the country. In a city hospital can be readily walked, and new books and appliances promptly purchased, and libraries easily visited; and in a city, also, exists that intercourse with eminent professional men which leads not only to the promotion of keenness and culture, but to the free interchange of new modes of treatment. In the country such opportunities do not exist. What is due diligence, therefore, in a city is not due diligence in the country, and what is due diligence in the country is not due

diligence in a city. Hence the question of diligence in each particular case is to be determined, not by enquiring what would be the average diligence of the profession, but what would be the diligence of an honest, intelligent and responsible expert in a position in which the defendant was placed."

In Townsend, Massachusetts, not long ago action was brought against a physician for malpractice in the treatment of a wound upon a patient's thumb. It was brought out in the evidence that an eminent surgeon lived about four miles from the physician's house. In the Judge's charge to the jury he stated, that the defendant "was bound to possess that skill only which physicians and surgeons of ordinary ability and skill, practicing in similar localities with opportunities for no larger experience ordinarily possessed, and he was not bound to possess that high degree of skill and art possessed by eminent surgeons practicing in large cities and making a speciality of surgery;" and continued "that if the case was one which the defendant had not the requisite skill to treat, he should have referred the plaintiff to a more skillful surgeon." It is the particular neighborhood in which the physician practices that is to furnish the standard of efficiency by which he is to be judged.

The supreme court of Massachusetts says that "it seems to us that physicians or surgeons practicing in small towns, or rural, or sparsely populated districts are bound to possess and exercise at least the average

degree of skill possessed and exercised by the profession in such localities generally. . . . There might be but few practicing in the given localities, all of whom might be quacks, ignorant pretenders to knowledge they do not possess, and it would not do to say, that because one possessed and exercised as much skill as the others, he could not be chargeable with the want of reasonable skill.

In the case of accidental circumstances, where it was impossible to procure proper instruments, or in case of illness or exhaustion, it might excuse the lack of skill or care, which under ordinary circumstances would be constituted malpractice. A physician acting under such circumstances and not putting himself forward, or acting in the absence of other physicians could not be held directly responsible for an injury caused by his disability.

A physician will be held liable for the negligence of an assistant to whom he entrusts the care of his patient. By eminent authority it is said, "the service which the physician is called upon to render is a *personal* trust, the moving consideration to which is, his individual skill and judgment. In contemplation of law, therefore, the service can not be transferred by him to another without the premission expressed, or implied of the patient. . . . Either he has charge of the case, or he has not. If he has, he is then responsible for his own acts and those of his agent done under his authority and command." But should the

physician advise his patient to employ another physician, he would then not be responsible for the malpractice of any physician that the patient might employ during his absence.

In Connecticut a man by the name of Hanche entered a surgeon's office and requested to be bled. This was preformed by a student in the doctor's office, but unskillfully, as the patient afterwards alleged. The court instructed the jury that the defendant was responsible for the acts of his apprentice, and that the question was, whether the injury which the plaintiff claims to have sustained was attributable to the want of proper skill on the part of the young man or to some accident. A surgeon is only bound to display sufficient skill and knowledge of his profession, and therefore, does not become an actual insurer. If, from some accident or variation in the constitution, or frame of the particular individual an injury should be inflicted it is not the fault of the medical man.

In the above case it was shown that the plaintiff did not consult the surgeon as to the propriety or advisability of bleeding him, but that he took it upon himself and only demanded that the manual operation be performed.

It is easy to perceive from the foregoing case, that it is authority upon the matter of the physician's liability for negligence of his assistant, and it also touches upon his responsibility for treatment asked for by the patient. Even though a patient should request that

some particular medicine be given him, or some particular operation be performed upon him, it would not absolve the physician from results, if there was anything in the man's appearance that would have a tendency to put him on his guard.

Suits for malpractice in the Eastern states are now much less frequent than formerly, while in the Western states actions against medical men are extremely common. It is not the physician, however, who suffers most in this way, but the surgeon, against whom suits for malpractice arise in cases of amputation, or fractures and dislocations. Not a few doctors, in fact, we might say many physicians, totally abstain from the practice of surgery altogether on this account, and many cases are reported in which a practitioner; yielding to earnest entreaty has consented to act as surgeon, who afterwards found himself involved in a suit for damages as a result of his good nature. In amputations medical men are aware, that the difficulty does not consist in the performance of the operation, but in deciding when it is really necessary to operate.

Doctor Elwell says: "An amputation that would have been justified by the rules of surgery, and the operator protected in court twenty-five years ago, or even within less time than that, would now be repudiated by the best authority, and the operator justly chargeable with ignorance and unskillfulness." He also says, "that in order to justify amputation whether

of the part, or of the whole of a limb, the question of recovery by other means must be placed beyond all reasonable doubt. Every resource compatible and within the means of the patient should be exhausted, and a consultation with one or more eminent surgeons of the neighborhood be held, and in the case of the proposed removal of the limb the necessity of this final crisis should be clearly established. Then, and not until then, should amputation be resorted to. Presuming that every expedient that skill could suggest has been adopted, and without success, the amputation may be performed."

More frequent however, cases of fracture or of dislocation are causes of suits of malpractice. Doctor Frank H. Hamilton, of New York, in his tables of "Deformities after Fractures" has thrown a flood of light upon this subject. On this very interesting subject Doctor Hamilton says: "I suppose that most practical surgeons have a tolerable correct appreciation of prognosis of fracture. I say tolerable, because I wish to imply a qualification. I do not think that a majority even of practical surgeons have a full appreciation of the subject. I am frank to confess, that until I commenced these investigations, I had not any just notions of the frequency of deformities after fractures. . . . Students will continue to go out from our hospitals with the belief that perfect union of broken bones is the rule, and that the exceptions imply, generally, unskillful management, and if when

hereafter, they themselves have occasion to treat a fractured femur, their result falls short of their standard of perfect success, they, taught also by the same instinct of self preservation which actuated their teacher, will conceal the truth from others, and even from themselves, if possible."

In all matter of damages, the general rule is in cases of mal practice that they might afford a fair compensation for any injury inflicted, and or the loss of money sustained in consequence of it. To illustrate this, a laboring man has broken his leg; he is negligently treated, on account of which he loses an extra month's work, besides being put to the expense of another physician to repair the injury done by the first attendant. In a case of this kind he would be entitled to a sum equal to the amount of money so lost in the employment of the second physician, and also as compensation for the extra time required for his recovery.

The case of *Brown vs. Clark* (57 Texas, 105) shows the extreme and inexcusable carelessness to which some physicians subject themselves. Clark was a practitioner of medicine and enjoyed a lucrative practice. He was called by Brown to attend his wife in confinement, who, after a hard labor gave birth to a healthy, male child. The doctor made a mistake and tied a string around the child's penis instead of the umbilical cord. Two weeks after the confinement an action against the doctor for damages was brought in the child's name, the evidence showing that "most of

the glans penis was destroyed, though, in its mutilated state it answered for urinating purpose, and physicians thought it might, when the child was grown, be used for getting children, though under difficulties on account of the destruction of the glans." The verdict was that the defendant should pay a fine of \$5, 500. 00. The court sustained the verdict, saying that "in a case of this nature, where the actual damages may include mental suffering through life, the court can hardly set aside a verdict as excessive."

Regular practitioners are seldom, if ever, indicted for murder or manslaughter in causing the death of a patient. Usually, a quack of some description, or a layman has undertaken to act the physician. Now, the decisions on this subject are very conflicting as to what is the extent of his liability. Considerations of public policy have chiefly determined the degree of ignorance, stupidity, or of rashness which a person may lawfully exhibit in the destruction of his patients. Courts have a natural anxiety to prevent impostors and enthusiasts from tampering with the life of their fellow men. On the other hand they have feared to deprive people in remote districts from all medical aid whatever, even though honest mistakes, resulting fatally, should occur. The law in this respect is especially tender to midwives. In some sections the law of criminal malpractice has been laid down more strictly.

In Liverpool there lived an old woman who dealt in medicine. A sailor who had been discharged from the Infirmary as cured, and having undergone salivation, was recommended by another patient to go to the old lady and get an emetic "to get the mercury out of his bones." She administered a solution of corrosive sublimate which caused his death. The old lady was indicted for manslaughter. She claimed she had received the medicine from a person from a foreign country, who had since returned. The court decided that where medical aid could be obtained, that, the person who would undertake to administer medicine which might have a dangerous effect, and thereby cause death, that such a person was guilty of manslaughter. She might have had no evil intention, and might have had a good one, but had no right to hazard the consequence in a case where medical assistance might have been obtained. That it did not matter whether she prepared the medicine herself, or obtained it from another.

St. John Long was the name of a man who flourished in London in 1830, as an expert in the cure of consumption. He was indicted for causing the death of one Miss Cashin. He made the assertion, and it was carried to her, that unless she subjected herself to his treatment she would be dead in sixty days. Through fear she subjected, although at the time she was in good health. His treatment consisted in the application of a powerful liniment to the patient's

It was not whether the act done was a thing that a physician of great skill would do, but whether it showed such total and gross ignorance in the person who did it, as must necessarily produce such a result. The charge to the jury was favorable, but the prisoner was found guilty and was sentenced to pay a fine of £250 to the King.

Strange to say, St. John Long was prosecuted in a second case against him by a woman who had been present at the inquest held on the body of Miss Cashin. At the time she applied to him she was in good health, but had some slight affection of the throat. Long put a blister upon her chest producing an extensive wound that resulted in death. The circumstances were similar to the first case above narrated. The Judge charged the jury that it did not matter whether a man had received a medical education or not; the question was in reference to the remedy he used and the conduct he displayed, and as to whether he acted with a degree of caution, as compared with gross and improper rashness and want of care. That if a man guilty of gross negligence in attending his patient after having administered the remedy, or of extreme rashness in the application of it, and death should result, that he would be liable to conviction for manslaughter. Strangely enough, however, though this case was more unfavorable to the prisoner than that of Miss Cashin, yet the jury acquitted him, whereas, in the first case they returned a verdict as guilty.

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In this country the most leading case that we have recorded, that is of interest to the physician is that of Samuel Thompson, the father and founder of the Thompsonian or Botanic system of medicine. This case is recorded in the sixth Massachusetts reports, 134. Thompson was born in the back woods of New Hampshire, on the 9th of February, 1769. His medical education consisted in gathering roots and herbs for an old midwife, or "woman doctor" known as the old Widow Benton. At the age of sixteen he commenced to practice medicine. He followed the Widow Benton's practice, and to all he gave hot drinks to cause perspiration. Thompson took a great fancy to lobelia ; he chewed it and found that it warmed up his stomach and made him vomit in a wonderful way. He used to give it on the sly to his playmates and farm hands, some of whom got very angry, while others thought that it cleared out their stomachs thoroughly and that he had a "natural gift of healing,"

Thompson's theory was, that all diseases were caused by canker in the stomach, and that in order to cure the disease, this canker must be brought out of the stomach by his "No. 1," or lobelia. He always commenced his treatment with lobelia and continued this plan of treatment for more than thirty years. He married and had eight children, all of whom had the measles, scarlet fever, diphtheria, itch, whooping cough, smallpox, and spotted fever. His wife also was frequently sick. Samuel attended his sick ones

at home in the orthodox way, besides having a great many other sick people, as boarders, in his own house and elsewhere. He believed in constant attention upon the sick and his severe treatment generally made it necessary. When he was thirty-six years of age he made up his mind to devise a system of medicine, and block out a universal routine treatment for all diseases. He claimed that there were four elements; viz: the earth or minerals, fire or heat, water or steam, air or life. The earth was dull, heavy, motionless and dead, and that minerals which came out of the earth would drag down all who took them into the earth or grave. Vegetables were full of life, they sprang up from the earth, or grave, toward heaven and upheld mankind from the tomb.

He adopted the itinerant plan of "doctoring" and traveled from town to town, staying from a few days to weeks or months, according to his success. He was in prison several times, tried eight times for malpractice, poisoning and manslaughter, and even murder, but was always acquitted.

In Beverly, Mass., in December, 1808, he announced his ability to cure all fevers, "whether black, gray, spotted, green, or yellow," and declared that the people were victims of imposition by regular physicians, that he alone was right. Ezra Lovett, jr., had been sick a few days with a common cold, and on Monday the second day of January, 1809, he applied to Thompson for treatment. Thompson steamed and

sweat him in the usual manner, and while still under the blankets he gave him a teaspoonful of lobelia, which caused vomiting. He repeated the emetic three times in a half hour, each one operating violently. Shortly the fourth dose was given which acted with still more vehemence. Strange to say, poor Lovett was able to sit up the next day, but was very weak. More lobelia was administered in "order to get out all the canker." On the third day the patient was washed all over with rum and ordered to walk out doors, "as air was life," while the January thermometer registered below zero. Then he gave him two more doses of lobelia. On the fourth day Lovett grew very weak, but was steamed again and more lobelia or "ram-cats," as he called it, administered. On the sixth day as the patient did not improve sufficiently rapid, two more emetics were given him twenty minutes apart. They did not cause emesis, so a quantity of pearlash and water was given him. After this the man appeared to be dying, was in great pain and agony. Thompson repeated the dose saying as they failed to operate, that "they would soon get down and unscrew his navel," meaning that it would soon act as a cathartic. A short time afterward Lovett went into convulsions; this Thompson claimed was the "hips," and got two strong men to hold him, while he forced down two more doses of lobelia followed by a dose of skunk-cabbage. The patient was completely exhausted and on the eighth day he died.

Thompson was placed under arrest for murder. In court it was shown that the defendant had practiced medicine for some years, and that it was not known that any other patient had died under his hand. A witness was called to testify, and stated that he himself had taken the prisoner's powders many times for three or four days at a time and had been relieved by them.

Chief Justice Parsons, before whom the trial was held, charged the jury as follows: "The prisoner's ignorance in this case is very apparent, on any other ground consistent with his evidence, it is not easy to conceive that on Monday evening before the death, when the second dose which failed to operate, through the extreme weakness of the deceased, he could expect a repetition of this fatal poison would prove a cathartic, and relieve the patient, or that he could mistake convulsive fits symptomatic of approaching death for a hypochondric affection. But on considering this point, the court were all of the opinion notwithstanding this ignorance, that if the prisoner acted with an honest intention and expectation of curing the disease by his treatment, although death, unexpected by him was the consequence, he was not guilty of manslaughter. . . .

"The death of a man caused by the voluntary following of a medical prescription can not be adjudged felony in the party prescribing. . . .

"If in this case, it had appeared in evidence, that the

prisoner had previously, by administering this lobelia experienced its injurious effects in the death or bodily harm of his patient, and that he afterwards administered it in the same form to the deceased, and he was killed by it, the court would have left it to the serious consideration of the jury, whether they would presume that the person administered it from an honest intention to cure, or from obstinate rashness and foolhardy presumption, although he might not have intended any bodily harm to his patient." If the jury had been of this latter opinion, it would have been reasonable to convict the prisoner of manslaughter at least. Thompson was acquitted.

From this dictum it would seem to be a fair conclusion that the law will allow a quack to kill one patient and no more for every drug in his materia medica. "By the common law of England, every dog in the kingdom is permitted to have one bite at the sheep."

As a result, of Thompson's foolhardy, and we might say criminal treatment, the Massachusetts Legislature of 1818 passed a law providing that "no person practicing physic or surgery shall be entitled to the protection of law, for the recovery of his fees, unless he shall have been licensed by the Massachusetts Medical Association, or be graduated a Doctor in Medicine at Harvard University."

Recently, however, the above case of Thompson which played so important a part in the literature of

malpractice was overruled by the same court in the case of the Commonwealth *vs.* Pierce (138 Mass., (165). On January 7th, 1883, a Dr. Pierce was called to attend one Mary A. Bemis, who was very ill and confined to her bed. Pierce directed that she should be clothed in flannel saturated with kerosene oil. In two hours the patient was in great pain and distress. The flannel was removed and Pierce was sent for. The flannels were replaced and kerosene again poured upon them from time for two days, when they were taken off by the defendant's direction. By this time she was very sick. Pierce continued his medical attendance for five days later, when he was discharged and another physician sent for. By this time the patient was past recovery, and two days later she died from the burns and blisters produced by the kerosene oil.

Now, in this case which is not unlike the case of Thompson, the evidence showed that the defendant had applied the same remedy that seemingly gave good results in other cases, and that the effects of which had been similar to that produced in this case. The defendant's counsel requested the Judge to instruct the jury that Pierce must have "so much knowledge or favorable opinion of the fatal tendency of the prescription, that the death could not be reasonably presumed by the jury to be the effect of obstinate willful rashness, but of an honest intent and expectation of cure." The Judge refused to give this instruc-

tion and said that "it was not necessary to show an evil intent." That "if by gross, reckless negligence, he caused the death, he is guilty of culpable homicide;" that "the question is, whether the kerosene, either in its original application, renewal, or continued use was the result of foolhardy presumption or gross negligence on the part of the defendant."

The jury found the prisoner guilty of manslaughter. His counsel alleged exceptions to the charge, but the Supreme Court overruled the objections, holding that the Judge rightly instructed the jury. In this case the defendant relied upon the case of *The Commonwealth vs. Thompron*, and it is plain to be seen that the result in the case was a wide departure from the law as laid down in the case of *Thompson*.

The following extract from Judge Holmes is worthy of quotation:

"A man's responsibility for his acts is determined by their tendency under all the circumstances known to him, and not by their tendency under all the circumstances known to him, and not by their tendency under all the circumstances actually affecting the result whether known or unknown. . . .

"Knowledge of a dangerous character of the thing is only equivalent to the foresight of the way in which it will act. . . . If a man were held answerable for everything he did that was dangerous, in fact, they would be held for all their acts, every time harm ensued."

The law of Massachusetts as now established is, "that he who causes the death of a patient by grossly ignorant or reckless treatment, is guilty of manslaughter, even though the act comes from good motives, and with the expectation of curing, in what seemed to him a prudent manner."

The liability of druggists rests practically upon the same principle that governs physicians. Gross or fatal mistakes, ignorance and carelessness in putting up prescriptions will render them liable to an action at law. Likewise, to intrust the compounding or vending of medicines to careless clerks, or apprentices, will entail criminal responsibility upon this principal.

Finally, as medical men are not infallible, the most skilled may err in judgment in the advising of a remedy and in the performance of a surgical operation. Any error in judgment that is made by a practitioner in medicine, or a practicing physician or surgeon, is clearly excusable. Every man is liable to error.

There are peculiar and obvious reasons why a physician should have a knowledge of the law of wills, and why he should be qualified to draw one. There are no instruments in law in which so little formality is required, or in which so little technical accuracy may be used. Though a will may be almost illiterate, it may be only a dozen lines in length, it may be obscure and ambiguous in a degree beyond what would be allowed in a contract, or in an ordinary business letter, yet it

will be sustained in law. It is not necessary that the draftsman shall be a lawyer. Any person may draw a will, either for himself or another. It is only necessary to learn one or two simple rules about the formalities of execution, to write an intelligible letter of directions about ordinary business, to be enabled to draft a will.

In two sorts of wills there may be exceptions to the suggestions that the physician may wisely undertake to draw them. One is, in case that the testator is not willing to make simple gifts of property and desires to "tie it up;" to create difficult and complex trusts; to leave money to a daughter so that her husband can not interfere with it; to a society so that the manager cannot change the use of it, or to trustees to accumulate it for some remote use. This class of wills had better be left to some ambassador of the law for execution. The other class will include wills which give legacies to the physician himself. The law is jealous of all dealings or gifts between physician and patient, in which the doctor may, perhaps, use his personal influence for his own advantage. When a gift to himself is to be made, the physician had better leave the drawing of the will to some other person.

But should the case be one in which the attending physician may properly draft, he should be careful to show upon the paper clearly in its terms that a will is intended. It should not appear obscure, so that it will be difficult to determine whether it was intended

as a deed, a memorandum, a credit of accounts, or the like. A good form of heading which is now used by many, might read: "The Will of A. B.," and this is entirely sufficient. Another form has been in the past quite popular, and is still used by some, reads like this: "In the name of God, amen. I, A. B., being in sound health, (or being weak and sick) but mindful of the uncertainty of life, do make this my last will and testament." Either of these headings may do, but any title which clearly indicates that the paper submitted is a will of the individual who signs it, is all that is necessary.

It is not necessary that any advice be given the doctor as to the mode of expressing the bequests, only that he should state the patient's wishes simply and literally. It will be better for the doctor to make no suggestions and to give no advice as to how the property shall be disposed of. By the language employed in the instrument submitted, should be clearly determined the true meaning and actual intention of the testator. Suggestions and advice, however well meant, are very apt to lead to misunderstandings and law suits. It is generally considered that such suggestions and advice have a tendency to influence the patient's mind as to the manner of disposing of the property.

The signing and witnessing of a will are matters of prime importance. As the laws of the states differ somewhat, the law which should be obeyed, is that of

the state where the testator has his home at the time of his death; and if of real estate, that of the state in which the property lies. Should a physician be called to attend a person taken sick on a journey he should be careful that the signing and witnessing should follow the law of the patient's own state. Some states allow a will to be made out of the state and valid by the laws of the place where it was made and to have the same effect as though it had been made according to the law of the state in which the patient had his home. Such is the case in Massachusetts, but this is not the general rule. It is always best to remember that the law to be followed should be the law of the testator's home. In regard to lands the rule is quite universal, and is applied to other things than wills; that the law of the state where the land lies, governs; though it is not difficult to conduct the signing and witnessing of a will in such a manner that the instrument will be valid under the law of almost every state. The most complex law of any of the states is that of Louisiana, whose system is peculiar. That state and the territories, may well be omitted from this brief statement. Massachusetts, Connecticut, the District of Columbia, Florida, (as to real estate,) Georgia, Maine, Maryland, New Hampshire, South Carolina and Vermont, require three witnesses. In the other states two witnesses are enough.

Many states allow a will written by the testator's own hand. These are called olographic wills, which

must be proven though not signed by attending witnesses. Ordinarily it is not difficult to obtain witnesses, and it is always best that three be obtained and by so doing avoid all question as to the proper number. Witnesses should be of sufficient age and mental ability to understand what is done, to remember definitely, and to give a straightforward account of it in court. It is not necessary that witnesses should know the disposition of the gifts made by the will. It is not only necessary that they should know that it is a will, and that it is signed as such. As to the signing, the testator should sign his name at the end of the bequests and directions. If he can not write, let him make his mark—the sign of a cross. Most states allow the testator's name to be signed by another in his presence and by his direction. He should then tell the witnesses that the paper is his will, and ask them to witness it. It is not important as to the manner in which he does this. It is only necessary that the idea be conveyed. The question may be asked, "is this your will and do you wish these persons to witness it?" And for him to answer "yes." The witnesses then should sign their names. It is not necessary although it is often customary and advantageous to place these names under a memorandum, such as "subscribed by the testator in our presence, and declared by him to us to be his will, whereupon, we, at his request, signed our names as witnesses this.....day of.....18..." If a wit-

ness can not write, he should make his mark. New requires that the witnesses shall add their residences to their signatures, and each one is exposed to penalty if it does not so. It is always convenient, although not always necessary, but ordinarily, witnesses will do well to follow their signatures by their places of residence.

The legal criterion of mental incapacity for making a will is, "Was the testator disabled by abnormal condition of the brain from recollecting his property and the persons among whom he would naturally distribute it, with sufficient clearness to decide upon intellectual dispositions?" The law does not require of the testators that they should bestow their property wisely. Folly is not insanity; neither is ignorance.

In case of aphasics, generally speaking, where there is no emotional change of character and disposition that would directly influence the opinion which the testator holds to his relatives, he should be considered to possess perfect testamentary capacity. A will case is mentioned in which there was complete aphasic and agraphia but the patient could turn to a dictionary and point out the words.

The law as to physicians in cases of emergency is not very definitely defined, though it will sustain them in some acts in view of their special knowledge. Ordinarily the law implies that there must be some authority in the physician to

do what he finds in the course of his practice to be absolutely necessary for the immediate protection of human life and safety in case of sudden emergency. The following case will serve as an example, At a time when small-pox was prevalent in a town the physician who was attending several patients in one house observed that the wall paper in the sick room had become infected and would propagate the contagion. He caused the paper to be removed. The landlord of the building sued him for trespass, but the court decided that the doctor's act was justified by the circumstances.

## Laws of

## Anæsthesia.

The law in relation to anæsthesia produced by the administration of anæsthetic agents, as ether, chloroform, etc., is noticed in the Statutes of the different states of the Union and is pretty much the same in all. Legally authorized practitioners of medicine may administer anæsthetic agents for purposes of anæsthesia, for surgical uses, and the uses of dentistry, obstetrics, etc., under certain conditions and restrictions. Penalties are imposed on persons who, while in a state of intoxication gives to another any anæsthetic or agent for the purpose of producing partial or complete anæsthesia. Likewise, a person is prohibited from the use of an anæsthetic agent, upon another, under conditions of incompetency from any cause, whether specifically mentioned in the Statute or not. If it can be shown that the individual who

undertakes the administration of an anæsthetic is incompetent from a lack of experience in its administration, or knowledge of its action when pushed to a lethal quantity, the law would in no wise bear him out in case of accident or the death of the individual to whom it is administered.

The law as applied to the regulation and administration of anæsthetics in Ohio and most of the States, requires, first competency, and in addition to this, if the person to whom administered be a female, there shall, at the time of inhaling and continuously during anæsthesia, or while under the influence of the agent administered, there shall be present a third person of an age competent to serve as a witness in court.

## THE PHYSICIAN;

## His Relation to the Law,

## AND THE

## Legal Rules Governing the Collection of his Fees.

## PART II.—FEES, ETC.

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*His Fees ; who should pay him.—His Compensation ; how determined.—His right to Pay for services by assistants.—His Pay in consultations.—His Pay as a witness in court.—His Pay for services to the poor.*

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**Legal Rules Governing the  
Collection of his Fees.**

Riley has recently published some very important information

as to the legal rules that apply to the collection of medical practitioners' fees.

"The collection of fees by legal process has been limited to a comparative recent period. The services of a medical practitioner under the Roman law was regarded as gratuitous, and the idea of a fee or salary which could be enforced legally, was repudiated.

"It seemed to be the feeling that the insistence upon a fee made the service mercenary and derogatory to the position of a member of the learned and liberal professions.

"In fact, in the case of lawyers pleading for their clients in the Roman courts, a law was once passed absolutely forbidding the acceptance of any remuneration. This was a regulation not likely to be regarded favorably, and was in fact soon repealed by a law permitting any reward up to ten thousand sesterces (\$400).

"While there was this rule which forbade the medical man from enforcing a claim for compensation, it seemed to apply strictly to cases where there was an employment without any stipulation as to compensation. When there was an express promise to pay a certain sum, the Roman law permitted an action for its recovery. It would seem, therefore, that even under this code the physicians would usually receive compensation, for it would be natural for them to ask for a promise of payment.

"In the Continental countries of Europe, where the Roman law held sway, the same rules were in force as to the collection of fees, until changed by legislative enactment. In England there was a corresponding law that a physician's services ought to be gratuitous, but here, as in Rome, an express promise to pay a fee could be enforced. Surgeons originally had a much lower grade in the profession than physicians, and there was no prohibition in regard to them. It did not appear derogatory to the standing of a surgeon to ask and receive compensation. In one case the physician was a surgeon as well, and the careful dis-

inction was drawn that he might enforce payment for what he had done as a surgeon, but not for what he had done as a physician.

"This prohibition of the courts gradually came to be regarded as artificial and unjust, and by the Medical Act of 1858 the whole fabric of rules preventing the physician from recovering compensation was swept away. The services of a medical man are now on the same footing with all other services, and a recovery is allowed in each case, according to the justice of the particular demand; the only exception being that, in Great Britain no action to recover fees will lie unless the medical man is a regular registered physician.

"In the United States the fiction that a physician is lowering himself by asking payment for his services never had any foothold at all, and in every case proper compensation has been allowed, according to the facts proven. There is the same restriction in most of the states that there is in England as to registration, and an unlicensed physician can not recover payment for his services.

"In some of the states it would seem that the fact of license or non-license does not affect the right to recover. If the services are worth anything, the practitioner can enforce payment. The statutes requiring a license state in such cases the penalty for violation. The usual rule is, however, that if a license is necessary for lawful practice as a physician, no suit can be

maintained for services by one who has not observed the law. The burden of showing that the practitioner is unlicensed is upon the defendant. It has been very concisely stated that the essential requisites to a recovery for fees are: 1. *Employment*; 2. *Ordinary skill*; 3. *Services rendered*; 4. *Usual charges*. And, in considering these points, it may be said that the first three are conditions precedent to any recovery, and the fourth concerns the extent of the compensation. In regard to the employment it may be briefly said that a person is of course liable who requests medical services for himself. He is also liable for services rendered for his family, and it is not always necessary to prove that he ordered such services. If a person orders medical services for another, he is usually considered as an agent merely and can not be made responsible for the physician's compensation.

"If a person expressly promises to pay, and the services are rendered on this account solely, he is liable and not the patient.

"If a person receives medical services without having ordered them, there is not now the presumption that they are gratuitous, but the law raises an implied promise to pay a reasonable sum for services which are accepted.

"The right to recover compensation does not depend upon success, unless the practitioner has expressly made a contract to that effect.

"It has been said that if a surgeon has performed

an operation which might have been useful but has merely failed in the event, he is, nevertheless, entitled to charge; but if it could not have been useful in any event he will have no claim upon the patient. A medical man who has made a patient undergo a course of treatment which plainly could not be of service can not make it the subject of charge.

"If the physician has employed the ordinary degree of skill required of one in his profession, and has applied remedies fitted to the complaint, and calculated to do good in general, he is entitled to his fees, although he may have failed in this particular instance, such failure being then attributable to some vice or peculiarity in the constitution of the patient, for which the medical man is not responsible.

"When the surgical instruments used in the amputation of an arm were rough and unusual, such as a large butcher knife and a carpenter's sash saw, the court charged the jury that, if the operation was of service and the patient did well and recovered, the surgeon was entitled to compensation.

"Malpractice, of course, always prevents the collection of compensation, for the rule is that unless some good had been done by the practitioner he can not enforce payment.

"If the good has been less than was properly expected, or than it ought to have been, it will affect the extent of the compensation.

"In one case it has been held that an action for fees

where no defense of malpractice is set up, will be a bar to a subsequent direct action for damages on account of malpractice. A change of treatment even when it is entire, and when it is made without notice or consultation with the patient, if prompt action on the part of the practitioner is requisite, will not prevent recovery for fees.

"The communication of an infectious disease, like smallpox, by the medical attendant will prevent a recovery for services rendered necessary by his lack of care, and the physician may be responsible himself in damages.

"A contract to cure is held to be unprofessional and vicious, as it warrants a result which never can be absolutely sure in any case. When, however, a contract of this kind is made it must be carried out, or there can be no recovery of fees.

"In regard to the extent of the recovery it may be said in general, that there is no limit except that it must be reasonable.

"In deciding what compensation is reasonable, attention may be paid to the professional standing of the medical man, the delicacy and difficulty of the case or operation, the time and care expended, and the wealth of the patient. A practitioner highly distinguished in the profession naturally expects larger compensation than a comparatively unknown man, and the courts recognize this proper rule.

"The difficulty of an operation or a course of treat-

ment requiring unusual care, also effects the extent of the recovery.

"The wealth of a patient is an element to be given some consideration, but if a person is a millionaire that is no reason why the bill should be extortionate.

"The juries are the judges as to the extent of the recovery, and their verdicts are as diverse and irreconcilable as is possible.

"The only thing that can be said is that juries usually render reasonable verdicts and when they are not they may be set aside by the court.

"In some communities, fee bills are common and the rates specified are known to the public. In such cases the practitioner will be bound by the list of charges which he has assented to. In some cases, also, fees are prescribed by law

"The charges made must be specific and state items and amounts.

"A round sum for medical services is not a proper charge to make. For instance, a charge of 'thirteen dollars for medicine and attendance on one of the general's daughters in curing the whooping-cough,' has been held by a South Carolina court to be too vague to base a recovery on.

"Physicians can recover for services rendered by their assistants, even when the latter are unlicensed.

"A separate charge may be made for medicines furnished to a patient, as these are not necessarily essential to the treatment; but it has been thought that a

surgeon's splints, bandages, etc., are a necessary part of his treatment, and are covered in a charge for services.

"This distinction is, however, very technical, and does not seem to be well founded.

"The existence of an epidemic does not warrant a physician in largely increasing his charges.

"When a doctor's bill is not paid on presentation or within a reasonable time, he is not limited by it, but may recover whatever the services are reasonably worth. A bill once presented will, however, be usually taken as the physician's opinion of the value of his services, and an increase is not favored by juries. Where witnesses vary as to the value of services, the tendency of courts and juries is to take the lowest estimate.

"The patient, and not the attending physician, must pay the consulting practitioner. Even if the attending physician promises to pay his professional brother, the latter is not bound by this, but may sue the patient. The consulting physician may in such cases have a choice of remedies, but he can not enforce his claim against both parties.

"Where what are called consultations are very numerous, the courts may consider them ordinary cases and give the compensation usual to such cases."

**Responsibility for Payment.** The question as to who shall pay the doctor is one of considerable import to physicians. It is a common occurrence that a person is suddenly taken sick and anyone who may chance to be at hand is requested to go for the doctor. He either leaves a message in his own name, or, if the doctor should be at home, requests him to call upon some one at a certain place. Now, is the messenger responsible for the doctor's fees? The courts have differed on this question. One view taken by the courts is, that whoever makes his own request, or leaves his own message or writes his order asking for a physician's services, no matter for whom it may be, is charged in the law for the services when rendered. Should he be wise enough, or even prudent enough to explain to the doctor that he comes as a messenger only, and that the services are to be rendered another, he may be excused. On the other hand, how is the physician to know the messenger's actual intention, if he makes the request, or gives the order on which the physician goes, although the services may be rendered another? However there are decisions more strongly in favor of the averse view, that a messenger does not always make himself liable, as the following case will show: In one of the southern states a plantation doctor found a case under his charge beyond his skill, and a neighboring surgeon was called in consultation, who finally sued the plantation doctor

for his services. The court decided against him and informed him that a person who merely summons a doctor does not engage to pay him.

Another case, in Pennsylvania, was somewhat as follows: A young man became of age and continued to live under the paternal roof; he was taken sick and his father called a physician. The doctor was compelled to sue for his fees, and instituted suit against the father, but the court decided that the father was not responsible for the bill, and as the son was the one benefited by the services rendered, and was of age, the suit should have been against him and not against the messenger. It is generally considered that there must be something more than simply carrying a request, to render a person liable for a doctor's bill. However, should one distinctly promise to pay the doctor, the courts will enforce such promise though not in writing.

Another case of interest occurred in one of the western states: A wayward boy ran away from home, but he finally returned to his father's house, was taken sick and finally died; naturally the father employed a physician. The physician was compelled to sue for his services. The father claimed that he acted only as a messenger, and refused to pay the bill; and that his liability for the boy's expenses terminated when the boy left his home. This was correct in one sense but the fact that the boy returned and was taken back by his father revived his liability, and

and a judgment was rendered in favor of the plaintiff.

It is often a perplexing question for the physician to know who is responsible for his fees. It often happens that some railroad passenger or a train hand has been injured by some fault of the company, and some one connected with the road sends for a doctor but afterward the railroad company refuses to pay the bill. The courts will sustain the claim that bills can not be rendered the company unless an agent, having due authority, has called the physician. Ordinary station agents and conductors have no authority to employ a physician or surgeon even in cases of emergency, unless they do so upon their own responsibility, and the courts will not sustain an action against the company for the recovery of fees in actions where such is the case. In case that any subordinate officer should call a physician, the latter may require him to prove his authority, and if such is correct, the bill may be collected from the company.

### **As a Witness**

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When questions of fact come before a judge or jury for decision which is beyond their knowledge, witnesses are permitted to give their opinions upon these questions and explain the relation to each other of the facts testified to by others. Witnesses who testify to opinions are called experts.

Many questions relating to chemistry, physiology, insanity, etc., are included in legal decision, and with-

out the aid of some one skilled in these branches of knowledge, no intelligent or just verdict can be arrived at.

An expert witness in court, in order to be competent, must have a personal knowledge of the facts at issue. It is the necessity of the case that is the basis for the introduction of such witnesses though their testimony may make an exception to the general rule.

The right to introduce medical experts in cases in court is firmly established and it is used when any advantage to either side of the controversy is thought possible. However, a great difference of opinion exists as to the value of expert testimony. Justice Davis remarked that, "If there is any kind of testimony that is not only of no value, but even worse than that, it is in my judgement that of medical experts. They may be able to state the diagnosis of the disease more learnedly, but upon a question whether it had at a given time reached such a stage that the subject of it was incapable to make a contract or irresponsible for his acts, the opinion of his neighbors if men of good common sense, was worth more than all the experts in the country." However, expert evidence is indispensable and of great value in aiding a Judge or jury to arrive at a just and impartial verdict in many cases in courts of law.

It has been decided in many cases that any person who is a physician can be sworn as an expert, and the courts recognize no difference between conflicting

schools of medicine, and no objection can be made to the testimony of an expert, based upon a dislike of his theory of medicine. If he has been educated in the science of medicine, of whatever school, it is enough. This may be by study without practice, or by practice without study. It is not even necessary that he be a physician or even have studied for one, nor be a graduate, nor licensed to practice. Yet while this is the correct statement of the general conditions of the law, it has some exceptions. In Vermont it is held that mere education as a physician without practice is not sufficient to qualify a person as an expert, while in Arkansas the courts hold that competency must be shown both by study and experience.

The courts of New York allow a physician or surgeon to give testimony although not in practice; though this act affects the credit given to the evidence. The law does not require the branch of knowledge under review to have been a specialty of the physician, but it must appear, however, in every case, that the witness has some peculiar knowledge not possessed by the majority of men.

As to the decision as to the qualification of an expert, might be mentioned that it is left to the Judge presiding over the trial. He is the one person who decides, and when he is satisfied, the matter is settled. The Judge may examine the witness previously as to the extent of his knowledge, but he will be permitted

to testify and the Judge's decision in admitting or excluding an expert from the witness stand can not be set aside upon an appeal except in a clear case of mistake. The Judge decides the competency of the witness and the jury decides as to the weight of his evidence. The jury may give such credit to his testimony as they think it is entitled to, but they are not bound by the opinions of medical experts and they may act against the greater number of opinions and decide in favor of the few, for the simple reason that the opinion of one expert, on account of his greater knowledge and experience, may be of more value than the opposite opinions of many.

A medical witness can not give an opinion as to the general merits of the case on trial, but he may say what, in his opinion, would be the result of certain facts submitted to him.

An expert can not state inferences or conclusions which an ordinary witness might be competent to form. In a murder trial where a body was found partially burned it was held not to be proper for medical witnesses to state as their opinion that death had occurred before the fire broke out. The fact that some parts of the body were untouched by the flames, and covered with loose clothes, still it was held that any unlearned person of good common sense might come to the same conclusion from the fact that the convulsive movement of a living body touched by flames would cause clothes to be displaced.

On the other hand, however, it would be proper to ask a medical witness his opinion whether a woman was pregnant on trial for attempted abortion; whether a blow was sufficient to cause death; whether a fracture of the skull was caused by a fall; whether a gunshot wound caused death, etc. Should the issue to be tried be an alleged insane condition of a person at the time of committing an act, the witness might be asked whether such and such appearances are symptoms of insanity. He can not be asked broadly if, in his opinion, the act is an insane one, but should a medical witness be present, and having heard all the evidence introduced, he might be asked: "Assuming the facts stated in the evidence to be true, what state or condition does it indicate?"

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Remember this: that the medical evidence of experts should not be given in technical language in all cases where it is possible to employ terms in ordinary use. Taylor mentions the case of a surgeon who in-

formed the court "that on examining the prosecutor he found him suffering from a severe contusion of the integument under the left orbit, with great extravasation of blood, and ecchymosis in surrounding cellular tissue which was in a tumefied state and there was considerable abrasion of the cuticle." The Judge said, "You mean, I suppose, that the man had a black eye?" "Yes." "Then why not say so at once?"

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It has been suggested, which suggestion has met with favorable comment, that there should be a body of trained public experts regularly appointed by the State and so paid by the State, whose services should always be at the command of the Judges in criminal cases, to be examined by the court to the extent that the Judge in his discretion considers demanded by the exigencies of the case, and that the compensation of these experts should be determined by the court and ordered to be paid by one side or the other.

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It has been suggested, which suggestion has met with favorable comment, that there should be a body of trained public experts regularly appointed by the State and so paid by the State, whose services should always be at the command of the Judges in criminal cases, to be examined by the court to the extent that the Judge in his discretion considers demanded by the exigencies of the case, and that the compensation of these experts should be determined by the court and ordered to be paid by one side or the other.

It is the theory of ordinary trials, that a person

known of facts important to the decision of the case can be brought into court to testify, whether willing or unwilling. This procedure is based upon the necessity, in complicated civilization, of being able to settle controversies by securing all proper evidence, and the common dependence of one citizen upon another.

However, these conditions do not apply to experts who are not summoned because of their personal knowledge of the facts of a case, but because of their superior technical knowledge. It has been fully settled that expert witnesses are not obliged to give expert testimony against their will in cases where they are subpœnaed. They cannot be compelled to testify as to their opinions upon assumed facts, if they do not desire to do so, though they will probably be guilty of contempt of court if they do not obey the subpœna. Compensation for expert testimony should be settled and decided upon preceding the giving of testimony, for if an expert witness begins to give his evidence without raising the point of a failure to compensate him, he cannot then stop of his own motion. He will be obliged to continue his testimony throughout.

Riley mentions the rules governing expert evidence as given by Lawson, which are as follows:

“The opinion of a medical man upon the condition of the human system, the cause of death, or the cause or effect of an injury, the effect of a particular treat-

ment, the likelihood of recovery, the mental condition of a person, and the like, is admissible.

A medical man cannot testify as an expert as to matters not of skill in his profession, or conclusions or inferences which it is the duty of the jury to draw for themselves.

"A medical man is an expert on the value of medical services, but not as to the measure of damages.

"The law does not recognize, to the exclusion of others, any particular school of medicine or class of practitioners.

"To give an opinion on medical questions, one may be qualified by study without practice, or by practice without study. Nor is it absolutely necessary that he should be a physician or have studied for one.

"The opinion of a medical man is not competent as to matters which he has not made a specialty in his study or practice.

"A medical man is not disqualified to give an opinion because he is not a graduate of a college, and does not possess a license to practice, or is not at the time in practice, or because a case exactly like the one in question has never been seen or read of by him before.

"One not an expert may give an opinion founded upon observation that a certain person is sane or insane."

A medical witness in court is bound by the same rules which apply to all other witnesses, but there

are some special rules which relate to him in his professional capacity. When physicians appear as ordinary witnesses on the trial of actions, they receive only the usual fees. It is otherwise in cases of expert testimony. In all the States, except, perhaps, Alabama and Texas, no one is obliged to testify as an expert against his will or unless he is compensated reasonably. When called upon as a witness to render expert testimony, the physician should be careful to demand payment before being sworn, or at all events, before the testimony has begun.

Because of their superior knowledge, and from the fact that they often required to study up a case thoroughly, or to be present during the whole trial, to listen attentively to the evidence in order to qualify them for opinions concerning it, the courts look upon it as unjust to require expert witnesses to accept the ordinary fees.

The fee in cases of expert testimony may vary almost as widely as the cases upon which they are called to testify. We know of one case in which a fee of \$500 was held to be reasonable.

**The Poor.** "The poor ye have always with you," is a humane appeal, many of whom are worthy objects of every doctor's pity. "The poor," said Boerhæve, "are my best patients. God will be their paymaster." The non-prospect of a fee should not cause you to withhold your services in all cases of sudden emergency or ac-

cident. Humanity requires that you should do many things for the sake of charity.

To give relief to the injured or those in great pain regardless of a bill, is every doctor's duty. He should follow the example of the Good Samaritan who succored the wounded man and took him to an inn and provided for his immediate necessities. For humanity's sake the physician should bind up wounds, mitigate pains, and relieve suffering in all cases of emergency. To the poor, life and health are everything, many of whom are able to amply repay for services rendered by genuine and lasting gratitude.

The King of Persia asked of two philosophers: "What situation of man is the most to be deplored?" The first replied, "Old age accompanied by poverty;" while the other stated, that "It was to have a body oppressed with infirmities, a mind worn out, and a heart broken by a series of disappointments." The vizier of the King, however, replied that he knew a condition far more to be pitied. Said he: "It is that of a man who has passed through life without doing good, and who, unexpectedly surprised by death, is sent to appear before the bar of the Sovereign Judge of all."

However, it may be said that there are three classes of the poor. Cathell puts it: "The Lord's poor, the Devil's poor and the poor devils. . . . The less you have to do with the Devil's poor, the better for you, but you will be compelled to attend more

than you choose even of these on account of their relationship to better patients."

Physicians are, in a measure, philanthropists, in so far as they extend their works of charity to suffering humanity.

In rendering services to the poor of a county, township or city, claims for compensation are often regulated by law. It will be necessary, in order to legally demand compensation, that those ordering medical services rendered to indigents are the proper officials. In most States the physician may go when summoned to any case surrounded by poverty without official authority, but must notify the officials, in writing, of the services rendered, within a certain period. If allowed to proceed, he can claim compensation from the county or township. Fees for services thus rendered are usually paid for in a minimum degree, and a physician whose practice is limited to the indigent poor will find his remuneration considerably abridged.

**The Physician as Coroner.** The chief function of the coroner in all States of the Union is the holding of inquests upon the bodies of persons found dead either from violent, suspicious or unknown causes.

In several States, especially California, inquests may be held upon the body of "any person who has been killed or has committed suicide or has suddenly died under such circumstances as to afford a reasonable ground to suspect that the death has been oc-

casioned by the act of another by criminal means." In a few States inquests are sometimes held in cases of persons who are seriously injured and in imminent danger of death. In some States, in addition to the ordinary duties of the coroner, he is required to be keeper of the jail when the sheriff is imprisoned, and he also performs the duty of that official when required. In Kentucky, inquests are held in cases of house-breaking. In other Southern States the coroner is a conservator of the peace, and may apprehend and commit felons and traitors. In Mississippi he is county ranger and performs the duties of that office. In Alabama, Arkansas, Colorado, Kansas, Louisiana, Minnesota, New Jersey, North Carolina, Ohio, Pennsylvania and South Carolina the coroner is elected by the citizens of the county. In Tennessee he is appointed by the court. In Virginia the court nominates two persons, one of whom the Governor appoints as coroner. In Illinois, Indiana and Maine the coroner is appointed by the Governor. In Texas, Vermont and West Virginia the office of coroner is unknown, the function of that official being performed by a Justice of the Peace.

The fees for coroners' services vary somewhat in different States. In New Hampshire the fee for holding an inquest is \$1.50. In some States it is \$5, and a few pay \$10. In addition to the fee named are fees for recording, mileage, and other items which present a wide range of variation. In a few

States the office of coroner is performed by a person other than a physician, but in these cases a physician is regularly appointed or selected by the coroner to perform the necessary examinations. The compensation of physicians thus employed is from \$6 in Minnesota to that of \$50 in other States, while Mississippi pays \$100 in cases where the body is exhumed.

Some cities of the United States make the coroner a salaried officer. Such is the case in New York, Philadelphia, Charleston, Wilmington (Delaware), and a number of other cities.

The number of jurors is usually either six or twelve. In New Hampshire it is limited to three, in Louisiana to five, and in Tennessee to seven.

Henry VIII, King of England, in 1540 was the first to grant permission to dissect a human body.

**The Laws of Dissection.**

Strange as it may seem this favor was not granted with an enlightened idea of its advantage to physicians and surgeons, but seemingly for the purpose of adding horror to the death of malefactors.

It is an interesting fact that but four persons a year, who were put to death for felony, were allowed the profession in the city of London.

Queen Elizabeth, in 1565, modified this privilege somewhat, and granted the College of Physicians and Surgeons a similar favor. The demand was so great that numerous attempts were made by grave robbers

to meet the wants of medical students. This evil became so great that in 1832 the Anatomy Act was passed, and by this provision the medical profession of Great Britain now secure material for dissection.

In this country, dissection of the human body is legalized by acts of the Legislatures of many States of the Union.

The first State to recognize the importance and necessity of such an enactment was New York, which in 1789 allowed the court in passing sentence upon criminals to award their bodies to surgeons for anatomical study. In 1854 this enactment was made more comprehensive, and in 1879, 1881 and 1883, laws were passed which gave medical colleges, for purpose of anatomical study, the bodies of unclaimed dead, persons dying in public hospitals, prisons, almshouses, asylums, morgues and other public receptacles for deceased persons. Provided, however, that such remains were not desired for interment by a relative or friend within forty-eight hours after death. Medical colleges are required to notify those who have lawful control of dead bodies of their desire, and are allowed such material in proportion to the matriculated students of each college within the State.

Ohio has similar laws to those of New York, only no mention is made with regard to the ratio of students per college within the State. The first applicant after death usually takes the subject, if legally made by a professor of anatomy, or the president of the

State Medical Society, or any auxiliary society acting in affiliation therewith. It is the unclaimed dead, from whatsoever source and wherever found, that comes within the meaning of the law. No bodies are allowed to be transported out of the State.

Similar laws have been passed in other States, and up to date twenty-four have declared dissection to be legal, and have indicated the source of supply, which is generally the gallows. The list of States is as follows: Alabama, Arkansas, California, Colorado, Connecticut, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Vermont and Wisconsin.

Twenty-nine of these States, including a portion of those named above, have forbidden the removal of bodies after interment for purpose of dissection. These States are: Alabama, Arkansas, California, Connecticut, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, Nebraska, New Hampshire, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, West Virginia and Wisconsin.

Many of these States have made no provision for anatomical study, while at the same time they require of physicians and surgeons the same high standard of qualification that is required by States who have

wisely and generously provided for obtainment of that indispensable and only means of anatomical study, the dissection of the dead. It is inconsistent in the extreme for a court and jury to pass sentence on those guilty of desecration, and render judgement in cases of malpractice, while at the same time they deprive seekers of a medical education of the only means of correct and absolute knowledge. In these States it is a well known fact that the material available from unobjectionable sources is inadequate to the demand, and the result in many instances is violation of the law.

Grave robbery is a revolting offense, and made a felony in most States, punishable by fine and imprisonment, and not a few worthy aspirants to medical knowledge find a place behind prison bars because of the lack of, or inadequate provision for, anatomical supply. In many instances this might be averted in a measure by Legislative enactment or by modification of existing laws.

## **The Law**

### **of Burial.**

The law treating on the disposition of the body after death is given somewhat at length by Riley, whose interpretation of this, like so many other subjects of medico-legal interest, may be safely taken as nearly correct, so far at least as is possible from light now obtainable on this subject:

“In England, in 1879, the Home Secretary informed a delegation from the Cremation Society,

which was organized the preceding year, that the regulations regarding burial permits did not recognize cremation, and an appeal would have to be made to Parliament to legalize the practice. But no bill was passed, as the sentiment against cremation was quite strong. In 1882 occurred the first judicial decision on this question, but it was not conclusive. In that case a Miss Williams was directed by the will of Henry Crookenden to burn his dead body, and to call upon the estate for the expenses. Miss Williams' brother was executor of the will, and as he had the body buried instead of burned, she applied after a time for a permit to remove and reinter the body. When possession of the body was obtained, it was removed to Italy, and there cremated.

"Suit was then begun for the expenses, amounting to £321, but the court decided against the claim, on the ground that possession of the body had been obtained under the false pretense of reintering it. The court refrained from deciding what was the legal status of cremation. In 1884, however, the question came squarely before Justice Stephen, in a case in which a father was attempting, on his own land, to burn the body of his child, and the neighbors combined to prevent his doing so. The father was indicted for committing a misdemeanor; but after a very careful and learned examination of the subject, Justice Stephen decided that cremation was not illegal. This practically settled the question; but for many reasons

it has been thought desirable to get the approval of Parliament, and bills have been introduced for that purpose."

The English law has secured for many centuries, even as far back as A. D., 750, according to Lord Stowell, the right of burial to every Englishman. He says :

"In England, about the year 750, spaces of ground adjoining the churches were carefully enclosed and solemnly consecrated and appropriated to the burial of those who had been entitled to attend Divine service in those churches, and who now became entitled to render back into those places their remnants to earth, the common mother of mankind, without payment for the ground which they were to occupy, or for the pious offices which solemnized the act of interment.

"This common-law right of interment was subject, in many ways to the control of the incumbent of the church, who was held to have a fee in the church yard. The rector could not absolutely prevent the burial of any person living in the parish, but he could require fees, and might refuse to read the burial service, or allow a headstone to be erected. Some offensive attempts, on the part of clergymen of the established church, to prevent the burial or adornment of the graves of dissenters, has led to a good deal of agitation and some legislation. By recent acts of Parliament there may be consecrated and unconsecrated

parts in the cemetery, and in the latter the rights of dissenters are considerably enlarged."

The right of burial does not include, according to Lord Stowell, the right to be buried in a coffin, and where in one case the relatives wished to bury the deceased in an iron coffin, a mandamus directing the authorities to permit the interment was refused. It was, however, decided that such an interment might be made upon payment of larger fees than usual.

It was considered that the use of iron coffins, more or less indestructible, would rapidly fill up the cemeteries, and as these were held for future generations as well as the present one, no general mode of interment would be allowed which has a tendency to fill the ground unduly.

Bodies cannot be removed from one burial ground to another without the consent of the Secretary of State, except in case of unconsecrated ground when the ordinary permission is sufficient. The right of burial implies the duty of burial on the part of surviving relatives or friends. In one case it was held that the owner of this house in which the person died must see to it that he was decently interred. In practice, however, when there are no friends or relatives to assume the duty, it is borne by the public, and the expence made a charge upon the community. This is also the custom and the law in this country as well as in England.

The regulations of the various States of the Union

on the subject of burial differ somewhat, and in general the subject is delegated to the smaller communities, such as town and city corporations, which have power to make ordinances covering the mode of burial.

In most cities, burial is not allowed without a license, and the right to disinter a body to search for evidence of crime or disease, is reserved by the public.

The private rights of the deceased, if they may be so termed, and those of surviving relatives form a very interesting subject, and the legal decisions bearing on one point or another, constitute quite an extended branch of the law. It will bring the principles involved more clearly into view, if the subject is considered under these three heads: 1—"The Body After Death and Before Burial;" 2—"The Body at Burial;" 3—"The Body After Burial."

I. THE BODY AFTER DEATH AND BEFORE BURIAL:—In case of death, the custody of the body is usually in the hands of near relatives, though the law regards the executors as having the lawful custody. The deceased may give directions regarding the place and manner of his burial, which will be binding in case they are known before the time of burial. If they are not discovered until afterward, the courts have in some instances declined to order a removal. The deceased cannot sell his body for purposes of dissection, for instance, so that the contract could be enforced in a court of justice. A person having lawful possession

of the body, by virtue of such an agreement, could probably hold it as against the relatives, though the courts will give him no help in trying to secure possession.

There is no such thing as ownership of a dead body, in the ordinary sense of barter and sale, inhering in the deceased himself, his relatives or executors. The courts have in many instances declared that there is no such thing as ownership of a dead body, and yet at other times a sort of quasi-ownership has been recognized in the executors to enable them to acquire possession of the body in order to inter it according to the wishes of the deceased. The ordinary rule is thus expressed in a Massachusetts case: "A dead body is not the subject of property, and after burial it becomes a part of the ground to which it has been committed—'earth to earth, ashes to ashes, dust to dust.'"

In the case of dead bodies cast upon the seashore, there is no ownership permitted to the finder, either in the bodies themselves or any article of value found upon them.

The quasi-ownership which the courts at times recognizes is practically only the right of custody, and involves the duty of burial. This, as has been said, belongs to the executor in case of a will, and where there is no testamentary disposition, then to the widow, husband or next of kin.

2. THE BODY AT BURIAL:—The custody of the body being lawfully in the hands of the executors or

next of kin. they have the right to select the place of interment, but they have not the right to override the wishes of the diseased, and courts of equity have often after interment directed a change to be made. The right to select a burial place is not an absolute one, for in a recent case in New York, long after the interment a will was discovered, which gave detailed directions as to the place of burial, the court refused to order a removal. The brief time between death and burial usually prevents any legal questions arising. These are generally caused by an attempt to remove the body after interment. The right of custody of the body will give the right to exclude objectionable persons from the funeral, if it is held in a private residence, as was recently decided in Rhode Island case. When the services are held in a church or public place, there is no decision on the subject, but it is not considered that there would, in that case, be any right of exclusion belonging to the executors or next of kin.

3. THE BODY AFTER BURIAL:—The law bearing on this division of the subject is mainly concerned with the question of removal. Cemetery authorities, health officials, executors or relatives may all have the right to remove a dead body, but the statutes of all the States prescribe the conditions of such removal, or else require an application to be made to a court, which judges the propriety of the application, and bases its decision not entirely upon the desires of the

applicant, but largely upon the supposed interest the public has in the permanence of internments. The law, it is said with great truthfulness, favors the "repose of the dead," and an order for disinterment will not be lightly made.

It cannot be said that an order of a court is necessary in every case of disinterment. The rules of cemetery organizations, or the health laws of the community, provide for cases in which all persons interested are united in desiring a removal. In all cases, however, in which there is a dispute as to the right, courts of equity will intervene, and issue such orders as are deemed proper upon the circumstances of each case. The cases touching on removal, when broadly generalized, develop these principles:

1. "The husband or wife has not an absolute right to remove the body against the will of the next of kin.
2. "The next of kin cannot remove the body against the will of the husband or wife.
3. "The next of kin cannot remove the body against the will of other next of kin of equal relationship, and public institutions or corporations have no right as against the next of kin.
4. "The owner of the burial-lot has no such absolute right to the realty as to carry with it the ownership of the bodies buried in the lot. These are held in trust."

The recent cases seem to develop the trust idea somewhat, and, as the claim of ownership is repudiat-

ed, it is natural that this principle of guardianship or trusteeship should become generally received, whether it is held to inhere in the cemetery organizations, in the owner of the burial-lot, in the relatives, or in the public. It is probable that the interest of the public, as the guardian of the general health, would be held by the courts to be paramount to all other considerations, in all cases in which it seems to conflict with private desires.

## THE PHYSICIAN;

His Relation to the Law,  
AND THE  
Legal Rules Governing the Collection of His Fees.

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PART III.—ETHICAL CODES.

*Constitution, By-laws and Ordinances of the American Medical Association.*

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## PLAN OF ORGANIZATION.

WHEREAS, The Medical Convention, held in the city of New York, in May, 1846, have declared it expedient "for the medical profession of the United States to institute a National Medical Association;" and inasmuch as an institution so conducted as to give frequent, united and emphatic expression to the views and aims of the medical profession in this country, must at all times have a beneficial influence, and supply more efficient means than have hitherto been available here for cultivating and advancing medical knowledge; for elevating the standard of medical education; for promoting the usefulness, honor and interests of the medical profession; for enlightening and directing public opinion in regard to the duties, responsibilities and requirements of medical men; for exciting and encouraging emulation and concert of action in the profession, and for facilitating and fos-

tering friendly intercourse between those who are engaged in it; therefore,

*Be it Resolved*, In behalf of the medical profession of the United States, that the members of the Medical Convention held in Philadelphia in May, 1847, and all others who, in pursuit of the objects above mentioned, are to unite with or succeed them, constitute a National Medical Association, and that for the organization and management of the same, they adopt the following regulations:

#### I. TITLE OF THE ORGANIZATION.

This institution shall be known and distinguished by the name and title of "The American Medical Association."

#### 2. MEMBERS.

The members of this institution shall collectively represent and have cognizance of the common interests of the medical profession in every part of the United States; and shall hold their appointment to membership either as delegates from local institutions, as members by invitation, as permanent members, or members by application.

The delegates shall receive their appointment from permanently organized State Medical Societies, and such County, and District Medical Societies as are organized by representation in their respective State Societies, and from the Medical Department of the Army and Navy of the United States, and the Marine

and Hospital Service of the United States.

Each delegate shall hold his appointment for one year, and until another is appointed to succeed him, and shall participate in all the business and affairs of the Association.

Each State, County, and District Medical Society, entitled to representation, shall have the privilege of sending to the Association one delegate for every ten of its regular resident members, and one for every additional fraction of more than half that number.

Provided, however, that the number of delegates from any particular State, Territory, County, City or Town shall not exceed the ratio of one in ten of the resident physicians who may have signed the Code of Ethics of this Association.

The Medical Staffs of the Army and Navy shall be entitled to four delegates each. The Marine Hospital Service of the United States shall be entitled to one delegate.

No individual who shall be under sentence of expulsion or suspension from any State or local Medical Society of which he may have been a member, or whose name shall have been, for non-payment of dues, dropped from the rolls of the same, shall be received as a delegate to this Association, or be allowed any of the privileges of a member, until he shall have been relieved from the sentence or disability by such State or local Society, or shall have paid up all arrears of membership; nor shall any person not a member and

supporter of a local Medical Society, where such a one exists, be eligible to membership in the American Medical Association.

No one expelled from the Association shall at any time thereafter be received as a delegate or members unless by a three-fourths vote of the members present at the meeting to which he is sent, or at which he is proposed.

Members by invitation shall consist of practitioners of reputable standing from sections of the United States not otherwise represented at the meeting. They shall receive their appointment by invitation of the meeting after an introduction from, and being vouched for by, at least three of the members present, or three of the absent permanent members. They shall hold their connection with the Association until the close of the annual session at which they are received; and shall be entitled to participate in all its affairs, as in the case of delegates, except the right to vote.

The permanent members shall consist of all those who have served in the capacity of delegates, and of such other members as may receive the appointment by unanimous vote, and shall continue such so long as they remain in good standing in the body from which they were sent as delegates, and comply with the requirements of the By-laws of the Association. Permanent members shall at all times be entitled to attend the meetings and participate in the affairs of

the Association, so long as they shall continue to conform to its regulations, but without the rights of voting; and, when not in attendance, they shall be authorized to grant letters of introduction to reputable practitioners of medicine residing in their vicinity, who may wish to participate in the business of the meeting, as provided for members by invitation.

Members by application shall consist of such members of State or County Societies, certified to be in good standing by the president and secretary of said Societies, as shall make application for admission. They shall have the right to receive the Journal on the same terms as other members.

Every member-elect, prior to the permanent organization of the annual meeting, or before voting on any question after the meeting has been organized, must exhibit his credentials to the proper committee, and sign these regulations, inscribing his name and address in full, specifying in what capacity he attends, and, if a delegate, the title of the institution from which he has received his appointment.

### III. MEETINGS.

The regular meetings of the Association shall be held annually. The place of meeting shall be determined, with the time of meeting for each successive year, by vote of the Association.

### IV. OFFICERS.

The officers of the Association shall be a President.

four Vice-presidents, one Permanent and one Assistant Secretary, a Treasurer, and Librarian. They shall be nominated by a special committee of one member from each State represented at the meeting, and shall be elected by vote of a general ticket.

Each officer, except the Permanent Secretary, shall hold his appointment for one year, and until another is elected to succeed him. The Permanent Secretary shall hold his office until removed by death, resignation, or a vote of two-thirds of the members present at a regular annual meeting.

The President and Vice-presidents shall assume the functions of their respective offices at the beginning of the annual meeting next succeeding their election; all other officers shall enter upon their duties immediately after their election.

The President shall preside at the meetings, preserve order and decorum in debate, give a casting vote when necessary, and perform all the other duties that custom and parliamentary usage may require.

The Vice-presidents, when called upon, shall assist the President in the performance of his duties, and during the absence or at the request of the President, one of them shall officiate in his place.

The Permanent Secretary shall record the minutes and authenticate the proceedings; give due notice of the time and place of each ensuing annual meeting; notify all members of committees of their appointment, and of the duties assigned to them; hold corres-

pondence with other permanently organized Medical Societies, both domestic and foreign; serve as a member of the Committee of Publication; and carefully preserve the archives and unpublished transactions of the Association.

The Assistant Secretary shall aid the Permanent Secretary in recording and authenticating the proceedings of the Association; serve as a member of the Committee of Arrangements, and perform all the duties of Permanent Secretary, temporarily, whenever that office shall be vacant, either by death, resignation or removal.

The Treasurer shall have the immediate charge and management of the funds and property of the Association. He shall be a member of the Committee of Publication, to which Committee he shall give bonds for the safe keeping and proper use and disposal of his trust. And through the same Committee he shall present his accounts, duly authenticated, at every regular meeting.

The Librarian shall receive and preserve all the property in books, pamphlets, journals, and manuscripts presented to, or acquired by, the Association, record their titles in a book prepared for that purpose, acknowledge the receipt of the same, and he shall be a member of the Committee of Publication.

#### V. STANDING COMMITTEES.

The following standing Committees, each composed of seven members, shall be organized at every annual

meeting, for preparing, arranging, and expediting business for each ensuing year, and for carrying into effect the orders of the Association not otherwise assigned, namely, a Committee of Arrangements and a Committee of Publication.

The Committee of Arrangements shall, if no sufficient reasons prevent, be mainly composed of seven members, of whom the Assistant Secretary shall be one, residing in the place at which the Association is to hold its next annual meeting; and shall be required to provide suitable accommodations for the meeting, to verify and report upon the credentials of membership, to receive and announce all essays and memoirs voluntarily communicated, either by members of the Association, or by others through them, and to determine the order in which such papers are to be read and considered.

The Committee of Publication, of which the Secretaries, Treasurer and Librarian must constitute a part, shall have charge of preparing for the press, and of publishing and distributing such of the proceedings, transactions, and memoirs of the Association as may be ordered to be published in such manner as the Association may direct. The six members of this Committee, who have not the immediate management of funds, shall also, in their own names as agents of the Association, hold the bond of the Treasurer for the faithful execution of his office, and shall annually audit and authenticate his accounts, and present a

statement of the same in the annual report of the Committee; which report shall specify the character and cost of the publications of the Association during the year, the number of copies still at the disposal of the meeting, the funds on hand for further operations, and the probable amount of the assessment to be laid on each member of the Association for covering its annual expenditures.

#### VI. FUNDS AND APPROPRIATIONS.

Funds shall be raised by the Association for meeting its current expenditures as awards from year to year, but never with the view of creating a permanent income from investments. Funds may be obtained by an equal assessment of not more than \$10 annually, on each of the delegates and permanent members; by voluntary contributions for specific objects; and by the sale and disposal of publications, or of works prepared for publication.

The funds may be appropriated for defraying the expenses of the annual meetings, including the necessary expenses of the Permanent Secretary in maintaining the necessary correspondence of the Association; for publication; for enabling the standing Committees to fulfill their respective duties, conduct their correspondence, and procure the materials necessary for the completion of their stated annual reports; for the encouragement of scientific investigation by prizes and awards of merit; and for defraying the expenses incidental to specific investigations under the instruc-

tion of the Association, where such investigations have been accompanied by an order on the Treasurer to supply the funds necessary for carrying them into effect.

#### VII. PROVISIONS FOR AMENDMENT.

No amendment or alteration shall be made in any of these articles, except at the annual meeting subsequent to that at which such amendment or alteration may have been proposed; and then only by the voice of three-fourths of all the delegates in attendance.

Provided, however, that when an amendment is properly under consideration, and an amendment is offered thereto, germane to the subject, it shall be in order, and if adopted, shall have the same standing and force as if proposed at the preceding meeting of the Association.

And, in acknowledgement of having adopted the foregoing propositions, and of our willingness to abide by them, and use our endeavors to carry into effect the objects of this Association as above set forth, we have hereunto affixed our names:

NAME OF MEMBERS.	RESIDENCE.	INSTITUTION REPRESENTED.
.....	.....	.....
.....	.....	.....
.....	.....	.....

#### BY-LAWS.

##### I. ORDER OF BUSINESS.

The order of business at the annual meetings of the American Medical Association shall at all times be

subject to the vote of three-fourths of all the members in attendance; and, until permanently altered, except when for a time suspended, it shall be as follows, namely:

1st. The calling of the meeting to order by the President elected the preceding year, or in his absence, by one of the Vice-Presidents.

2d. The report of the Committee of Arrangements on the credentials of members, after the latter have registered their names and addresses, and the titles of the institutions which they represent.

3d. The reception of members by invitation.

4th. The election of permanent members.

5th. The reading of notes from absentees.

6th. The hearing of the annual address of the President.

7th. The reception of the reports of all special committees and voluntary communications, and their reference to the appropriate Sections.

8th. The appointment of the committee of one from each State represented, to nominate officers of the Association, and to fill the standing committees.

9th. The reading and consideration of the reports of the Standing Committees, of Publication, on Prize Essays, and of Chairmen of Sections.

10th. Resolutions introducing new business, and instructions to the permanent committees.

11th. The selection of the next place of meeting.

12th. The report of the Nominating Committee,

and the election of officers of the Association.

- 13th. Reports from the several Sections.
- 14th. Reading of the minutes by the Secretary.
- 15th. Unfinished and miscellaneous business.
- 16th. Adjournment.

## II. SECTIONS:

The general meetings of the Association shall be restricted to the morning sessions; and afternoon sessions; commencing at three o'clock, shall be devoted to the hearing of reports and papers and their consideration, in the following Sections:

1. Practical Medicine, Materia Medica, and Physiology.
2. Obstetrics and Diseases of Women.
3. Surgery and Anatomy.
4. State Medicine.
5. Ophthalmology, Otology, Laryngology.
6. Diseases of Children.
7. Dental and Oral Surgery.

The chairman and secretary of the several Sections shall, like other officers of the Association, be nominated by the special committee of one member from each State represented at the meeting, and elected by a vote on a general ticket. They shall hold their office until the close of the proper business of the annual meeting next succeeding their election, and until their successors are appointed.

The Section on State Medicine shall be composed of one member from each State, one from the army

and one from the navy of the United States, representing, as far as practicable, the State Boards of Health. The officers of this Section to be also designated by the Committee on Nominations.

The chairmen of the several Sections shall prepare and read in the general sessions of the Association, papers on the advances and discoveries of the past year in the branches of science included in their respective Sections; the reading of such papers not to occupy longer than forty minutes for each.

It shall be the duty of every member of the Association who proposes to present a paper or report to any one of the Sections, to forward either the paper, or a *title* indicative of its contents, and its *length*, to the Chairman of the Committee of Arrangements at least one month before the annual meeting at which the paper or report is to be read. It shall also be the duty of the chairman and secretary of each Section to communicate the same information to the Chairman of the Committee of Arrangements concerning such papers and reports as may come into their possession or knowledge, for their respective Sections, the same length of time before the annual meeting. And the Committee of Arrangements shall determine the order of reading or presentation of all such papers, and announce the same in the form of a programme for the use of all members attending the annual meeting. Such programme shall also contain the rules specified in the By-Laws and Ordinances concerning the con-

sideration and disposal of all papers in the Sections.

No papers shall be read before either of the Sections, the reading of which occupies more than twenty minutes. Such papers shall be referred by the Section to sub-committees especially appointed for their examination. The sub-committees shall be allowed thirty days for such examination; at the end of which time they shall forward the papers to the Committee of Publication, with such recommendation as they may deem proper. The author of such papers, however, may read abstracts before the Section within the allotted twenty minutes. No member shall address the Section more than once upon the same subject, nor speak longer than fifteen minutes without unanimous consent.

All papers presented directly to the Association; and other matters, may, at the discretion of the Association, be referred to the various Sections for their consideration and report.

*Prize Essays.*—There shall be four annual prizes of two hundred and fifty dollars each, which shall be awarded at the close of the second year after announcement, as hereinafter explained, for strictly original contributions to medical and surgical progress.

It shall be the duty of the chairman of each of the following four Sections: Practical Medicine, Materia Medica, and Physiology; 2. Obstetrics and Diseases of Women; 3. Surgery and Anatomy. 4. State Medicine, to appoint annually before the adjournment

of the meeting of the Association three members of ability and good judgment who shall constitute a Committee of Selections, and who shall, within thirty days thereafter, select and publicly announce for competitive investigation and report, a subject belonging to one or other of the branches of medicine included in the title of the Section.

It shall also be the duty of the chairman of each of the Sections mentioned to appoint annually a Committee of Award, consisting of three experts, who shall carefully examine the essays offered for competition, and, if any one shall be found worthy of the prize as a substantial contribution to medical knowledge, to recommend the same to the Association.

All essays placed by their authors for competition shall be in the hands of the chairman of the respective Committees of Award on or before the first day of January preceeding the meeting of the Association at which the reports of the committees are required to be made.

All Prize Essays shall be considered as the property of the Association.

The names of the authors of the competing essays shall be kept secret from the Committees by such means as the latter may provide.

Membership in either of the two committees shall not debar from membership in the other; nor shall membership in the Committee of Selection exclude a member from the privilege of offering a competing

essay.

### III.—STANDING COMMITTEES.

The following are the Standing Committees of the Association, to be filled by the Committee on Nominations, and to report at the next annual meeting subsequent to their appointment, namely: Committee of Arrangements, Committee of Publication, and Committee on American Medical Necrology.

The Committee of Publication shall append to each volume of the Transactions hereafter published, a copy of the Constitution, By-Laws and Code of Ethics of the Association. It shall print conspicuously, at the beginning of each volume of the Transactions the following disclaimer, namely: The American Medical Association, although formally accepting and publishing the reports of the various standing committees, holds itself wholly irresponsible for the opinions, theories or criticisms therein contained, except when otherwise decided by special resolution.

The Committee on American Medical Necrology shall consist of one member for each State and Territory represented in the Association, whose duty it shall be to procure memorials of the eminent and worthy dead among the distinguished physicians of their respective States and Territories, and transmit them to the chairman of this committee on or before the first of April of each and every year.

### IV.—THE PUBLICATION OF PAPERS AND REPORTS.

No report or other paper shall be entitled to publication in the volume for the year in which it shall be presented to the Association, unless it be placed in the hands of the Committee of Publication on or before the first day of July. It must also be so prepared as to require no material alteration or addition at the hands of its author.

Authors of papers are required to return the proofs within two weeks after their reception; otherwise they will be passed over and omitted from the volume.

Every paper received by this Association and ordered to be published, and all plates or other means of illustration, shall be considered the exclusive property of the Association, and shall be published and sold for the exclusive benefit of the Association.

The Committee of Publication shall have full discretionary power to omit from the published Transactions, in part or in whole, any paper that may be referred to it by the Association, or either of the Sections, unless specially instructed to the contrary by vote of the Association.

#### V.—ASSESSMENTS.

The sum of five dollars shall be assessed, annually, upon each delegate to the sessions of the Association, as well as upon each of its permanent members, whether attending or not, for the purpose of raising a fund to defray the necessary expenses. The payment of this sum shall be required of the delegates and

members in attendance upon the sessions of the Association previously to their taking their seats and participating in the business of the sessions. Permanent members, not in attendance, shall transmit their dues to the Treasurer.

Any permanent member who shall fail to pay his annual dues for three successive years, unless absent from the country, shall be dropped from the rolls of permanent members, after having been notified by the Secretary of the forfeiture of his membership.

#### VI.—DELEGATES OF THE MEDICAL STAFF OF THE ARMY AND NAVY.

Delegates representing the medical staffs of the United States Army and Navy, shall be appointed by the Chiefs of the Army and Navy Medical Bureaus. The number of delegates so appointed shall be four from the army medical officers, and an equal number from the navy medical officers.

#### VII.—DELEGATES TO FOREIGN MEDICAL SOCIETIES

The President shall be authorized annually to appoint delegates to represent this Association at the meetings of the British Medical Association, the American Medical Society at Paris, and such other scientific bodies in Europe or other foreign countries as may be affiliated with us.

No one shall be permitted to address the Association, except he shall have first given name and residence, which shall be distinctly announced from the chair,

and the member may be required to go forward and speak from the stand, but not more than ten minutes at one time.

No one appointed on a special committee, who fails to report at the meeting next succeeding the one at which he is appointed, shall be continued on such committee, or appointed on any other, unless a satisfactory excuse is offered.

#### IX.—CONDITION EXCLUDING REPRESENTATION.

No State or Local Medical Society, or other organized institution, shall be entitled to representation in this Association that has not adopted its Code of Ethics; or that has intentionally violated or disregarded any article or clause of the same.

#### X.—OF THE PREVIOUS QUESTION.

When the previous question is demanded, it shall take at least twenty members to second it; and when the main question is put under force of the previous question and negatived, the question shall remain under consideration the same as if the previous question had not been enforced.

#### XI.—JUDICIAL COUNCIL.

A council, consisting of twenty-one members, shall be appointed by the Nominating Committee, whose duty it shall be to take cognizance of, and decide, all questions of an ethical or judicial character that may arise in connection with the Association. Of the

twenty-one members of the council first appointed the seven first named on the list shall hold office one year and the second seven named shall hold office two years.

With these exceptions the term of office of members of the council shall be three years, seven being appointed by the Nominating Committee annually.

The said council shall organize by choosing a president and secretary, and shall keep a permanent record of its proceedings. The decisions of said council on all matters referred to it by the Association shall be final, and shall be reported to the Association at the earliest practical moment.

All questions of a personal character, including complaints and protests, and all questions on credentials, shall be referred at once, after the report of the Committee of Arrangements or other presentation, to the *Judicial Council*, and without discussion.

#### XII.—NEW BUSINESS.

No new business, resolutions by members, etc., shall be introduced at the general session of the Association except on the first and fourth days of meetings.

#### XIII.—OFFICERS AND COMMITTEES.

In the election of officers and appointment of committees by this Association and its President, they shall be confined to members and delegates present at the meeting, except in the Committee of Arrangements.

## ORDINANCES.

*Resolved*, That the several Sections of this Association be requested, in the future, to refer no papers or reports to the Committee of Publication, except such as can be fairly classed under one of the three following heads, namely: 1. Such as may contain and establish *positively* new facts, modes of practice, or principles of real value. 2. Such as may contain the results of well devised original experimental researches. 3. Such as present so complete a review of the facts on any particular subject as to enable the writer to deduce therefrom legitimate conclusions of importance.

*Resolved*, That the several sections be requested, in the future, to refer all such papers as may be presented to them for examination by this Association, that contain matter of more or less value, and yet cannot be fairly ranked under either of the heads mentioned in the foregoing resolution, back to their authors with the recommendation that they be published in such regular medical periodicals as said authors may select, with the privilege of placing at the head of such papers, "Read to the                      Section of the American Medical Association on the                      day of                      18                      ."

(Vide *Transactions*, vol. xvi. p. 40.)

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*Resolved*, That, instead of yearly reprinting the list of members of the American Medical Association, the Committee of Publication be instructed to prepare and

print in the *Transactions* an alphabetical catalogue triennially, containing a complete list of the Permanent Members, with their names in full, designating their residences, the year of their admission, the offices they may have held in the Association, and, in case of death or rejection, the date thereof. (Vide *Transactions*, vol. xvii. p. 33.)

*Resolved*, That no report or other paper shall be presented to this Association unless it be so prepared that it can be put at once into the hands of the Permanent Secretary, to be transmitted to the Committee of Publication. (Vide *Transactions*, vol. xvii. p. 27.)

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*Resolved*, That the Permanent Secretary hereafter and from this date be authorized to draw a warrant upon the treasurer for the expenses incurred in his attendance upon each session of the Association, and that the treasurer is hereby instructed to pay the same. (Vide *Transactions*, vol. xviii. p. 42.)

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*Resolved*, That the faculties of the several medical colleges of the United States be recommended to announce explicitly in their annual announcements, circulars and advertisements that they will not receive certificates of time of study from irregular practitioners, and that they will not confer the degree upon any one who may acknowledge his intention to practice in accordance with any exclusive system. (Vide *Transactions*, vol. xix. p. 31.)

*Resolved*, That those gentlemen who desire to report on special subjects, and will pledge themselves to report at the next meeting, be requested to send their names, and the subjects on which they desire to report, to the Permanent Secretary. Vide) *Transactions*, vol. xix. p. 42.

*Resolved*, That hereafter the necessary expenses for rent of hall for general meetings and rooms for sections to accommodate the annual meetings, and the necessary expenses for cards of membership, be paid out of the treasury of the Association. [Vide *Transactions*, vol. xix. p. 42.]

*Resolved*, That each State Medical Society be requested to prepare an annual register of all the regular practitioners of medicine in their respective States, giving the names of the college in which they may have graduated, and date of diploma or license. (Vide *Transactions*, vol. xx. p. 20.)

*Resolved*, that this Association recognizes specialties as proper and legitimate fields of labor.

*Resolved*, That specialists shall be governed by the same rules of professional etiquette as have been laid down for general practitioners.

*Resolved*, That it shall not be proper for specialists publicly to advertise themselves such, or to assume any title not specially granted by a regularly chartered college

*Resolved*, That private hand-bills addressed to members of the medical profession, or by cards in medical journals, calling the attention of professional brethren to themselves as specialists, be declared in violation of the Code of Ethics of the American Medical Association. (Vide *Transactions*, vol. xx. p. 28.)

*Resolved*, That a Committee of one be appointed, residing at Washington, to render the Librarian of Congress such assistance as the interests of the Association may require. (Vide *Transactions*, vol. xx. p. 29.)

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*Whereas*, The proper construction of Art. iv., Sec. 1, Code of Ethics, A. M. A., having been called for, relative to consultation with irregular practitioners who are graduates of regular schools.

*Resolved*, That said Art. iv., Sec. 1, Code of Ethics, excludes all such practitioners from recognition by the regular profession. (Vide *Transactions*, vol. xx. p. 30.)

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*Resolved*, That if any member fail to reply for more than one year to the circular sent to him by the Committee of Publication he shall forfeit his right to the volume, and it shall revert to the Association, to be sold to any applicant at the current rates. (Vide *Transactions*, vol. xxi. p. 30.)

*Resolved*, That the Committee of Arrangements for the next ensuing meeting of this Association, and for all meetings thereafter, be directed to prepare a list of

members present on a separate roll, for convenience and accuracy in calling the ayes and nays when the same shall be demanded. (Vide *Transactions*, vol. xxi p. 60.)

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*Resolved*, That each year, until otherwise ordered, the President-elect and the permanent Secretary be directed to appeal in the name of the Association, to the authorities of each State where no Board of Health exists urging them to establish such boards. (Vide *Transactions*, vol. xxvi. p. 50.)

*Resolved*, That the permanent Secretary is hereby directed annually to report the names of States where boards of health exist, and also of those which decline to establish them ; said report to form a part of the annual proceedings of the Association. (Vide *Transactions*, vol. xxvi. p. 50.)

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*Resolved*, That members of the medical profession who in any way aid or abet the graduation of medical students in irregular or exclusive systems of medicine, are deemed thereby to violate the spirit of the ethics of the American Medical Association. (Vide *Transactions* vol. xxvii. p. 48.]

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*Resolved*, 1. That the American Medical Association adopts the International Metric System, and will use it in its Transactions. [Vide *Transactions*, vol. xxx. p. 44.]

2. Requests that those who present papers at its future meetings employ this system in their communications, or reprints thereof. [Vide *Transactions* vol. xxx. p. 44.]

3. Requests the medical boards of the hospitals and dispensaries to adopt the Metric System in prescribing and recording cases ; and that the faculties of the medical and pharmaceutic schools adopt it in their didactic, clinical, or dispensing departments. [Vide *Transactions*. vol. xxx. p. 44.]

*Resolved*, That the President and Secretary of this Association are directed to annually petition Congress to enact a law which shall permit every person engaged in a scientific pursuit to import for his own use free of duty, any one book or instrument appertaining to his special pursuit. Vide *Transactions*, vol. xxx. p. 45.]

*Resolved*, That the above named officers are further directed to urge the State Medical Societies and their auxiliary branches to aid this Association in accomplishing this purpose, by petitions to Congress ; and by otherwise influencing Congressmen. [Vide *Transactions*, vol. xxx. p. 45.]

*Decision by Judicial Council*: A gentleman who is not in affiliation with a County, District, or State Medical Society, where such organizations exist, is *not* entitled to be registered as a permanent member upon the claim of having been a delegate from a body not

now entitled to representation in this body. [Vide *Transactions*, vol, xxx. p. 57.]

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*Resolved*: I. That a committee of five be appointed by the President of the Association, to be called the Standing Committee on "Atmospheric Conditions, and their relations to the Prevalence of Disease."

II. That that committee be authorized to select such places as will best indicate atmospheric conditions in the more important climatic and sanitary districts of the United States—not less than six, nor more than twelve—and establish therefore a means for continuous observation and record for of all appreciable conditions of atmosphere, according to the most approved methods, and of the origin and prevalence of all acute diseases.

III. That the Committee through their chairman, be authorized to draw upon the Treasurer of this Association for such sums as may be found necessary for the proper execution of the work assigned to it, the aggregate amount not to exceed \$500, during the ensuing year, and that a detailed report of all sums drawn and expenditures made must be presented at the next annual meeting of the association. [Vide *Transactions*, vol. xxxii, p. 35.]

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#### EXPLANATORY OF THE CODE

Dr. Davis [meeting of 1885] also made a report in

behalf of the special committee appointed at the last meeting [1884] to consider certain suggestions that had been made in the annual address of the President [Dr. Austin Flint, Sr.] as to the advisability or giving an authoritative exposition of some of the features in the Code that seemed to have been misunderstood. The committee, having given the subject due consideration, respectfully submitted its report, which was signed by N. S. Davis, A. Y. P. Garnett, H. F. Campbell, Austin Flint and J. B. Murdock, in the form of the following preamble and resolutions, which were unanimously adopted.

“WHEREAS, Persistent misrepresentations have been and are still being made concerning certain provisions of the Code of Ethics of this association, by which many in the community, and some even in the ranks of the profession, are led to believe that these provisions exclude persons from professional recognition simply because of differences of opinions or doctrines, therefore be it

“*Resolved*, That clause 1, Art. iv., in the National Code of Medical Ethics is not to be interpreted as excluding from professional fellowship on the ground of differences in doctrine or belief those who in other respects are entitled to be members of the regular medical profession. Neither is there any other article or clause of the said Code of Ethics that interferes with

the exercise of the most perfect liberty of individual opinion and practice.

*“Resolved, That a voluntary disconnection or withdrawal from the medical profession proper is constituted by indicating to the public a sectarian or exclusive system of practice, or by belonging to an association or party antagonistic to the general medical profession.*

*“Resolved, That there is no provision in the Code of Medical Ethics in any way inconsistent with the broadest dictates of humanity; and the article which relates to consultation can not be correctly interpreted as interdicting under any circumstances the rendering of professional services whenever there is a pressing or immediate need of them—on the contrary, to promptly meet the emergencies occasioned by disease or accident, or to give a helping hand to the distressed without unnecessary delay, is a duty fully enjoined on every member of the profession, by both the letter and the spirit of the entire code; but no such emergencies or circumstances can make it proper to enter into professional consultation with those who have voluntarily disconnected themselves from the regular medical profession in the matter indicated by the preceding resolutions.”*

## The Code of Ethics of the American Medical Association.

*Of the duties of  
Physicians to their  
Patients and the ob-  
ligations of Patients  
to their Physicians.*

### ART. I.—*Duties of Physicians to their Patients.*

1. A physician should not only be ever ready to obey the calls of the sick, but his mind ought also to be imbued with the greatness of his mission, and the responsibility he habitually incurs in its discharge. These obligations are the more deep and enduring, because there is no tribunal other than his own conscience to adjudge penalties for carelessness or neglect. Physicians should therefore, minister to the sick with due impressions of the importance of their office; reflecting that the ease, the health, and the lives of those committed to their charge, depend on their skill, attention and fidelity. They should study, also their deportment, so to unite *tenderness* with *firmness*, and *condescension* with *authority*, as to inspire the minds of their patients with gratitude, respect and confidence.

§ 2. Every case committed to the charge of a physician should be treated with attention, steadiness and humanity. Reasonable indulgence should be granted to the mental imbecility and caprices of the sick. Secrecy and delicacy, when required by peculiar circumstances, should be strictly observed; and the familiar and confidential intercourse to which physicians are admitted in their professional visits should be

used with discretion, and with the most scrupulous regard to fidelity and honor. The obligation of secrecy extends beyond the period of professional services; none of the privacies of personal and domestic life, no infirmity of disposition or flaw of character observed during professional attendance should ever be divulged by the physician except when he is imperatively required to do so. The force and necessity of this obligation are indeed so great that professional men have, under certain circumstances, been protected in their observance of secrecy by courts of justice.

§ 3. Frequent visits to the sick are in general requisite, since they enable the physician to arrive at a more perfect knowledge of the disease—to meet promptly every change which may occur, and also tend to preserve the confidence of the patient. But unnecessary visits are to be avoided, as they give useless anxiety to the patient, tend to diminish the authority of the physician, and render him liable to be suspected of interested motives.

§ 4. A physician should not be forward to make gloomy prognostications, because they savor of empiricism, by magnifying the importance of his services in the treatment or cure of the disease. But he should not fail, on proper occasions, to give to the friends of the patient timely notice of danger when it really occurs; and even to the patient himself, if absolutely necessary. This office, however, is so peculiarly

alarming when executed by him, that it ought to be declined whenever it can be assigne to any other person of sufficient judgment and delicacy. For the physician should be the minister of hope and comfort to the sick ; that, by such cordials to the drooping spirit he may smoothe the bed of death, revive expiring life and counteract the depressing influence of those maladies which often disturb the tranquility of the most resigned in their last moments. The life of a sick person can be shortened not only by the acts, but also by the words or the manner of a physician. It is, therefore, a sacred duty to guard himself carefully in this respect, and to avoid all things which have a tendency to discourage the patient and to depress his spirits.

§ 5. A physician ought not to abandon a patient because the case is incurable ; for his attendance may continue to be highly useful to the patient, and comforting to the relatives around him, even in the last period of a fatal malady, by alleviating pain and other symptoms, and by soothing mental anguish. To decline attendance, under such circumstances, would be sacrificing to fanciful delicacy and mistaken liberality, that moral duty which is independent of, and far superior to, all pecuniary consideration.

§ 6. Consultation should be promoted in difficult or protracted cases, as they give rise to confidence, energy and more enlarged views in practice.

§ 7. The opportunity which a physician not unfre-

quently enjoys of promoting and strengthening the good resolutions of his patients, suffering under the consequences of vicious conduct, ought never to be neglected. His counsels, or even remonstrances, will give satisfaction, not offense, if they be proffered with politeness, and evince a genuine love of virtue, accompanied by a sincere interest in the welfare of the person to whom they are addressed.

ART. II.—*Obligations of patients to their physicians.*

§ 1. The members of the medical profession, upon whom is enjoined the performance of so many important and arduous duties toward the community, and who are required to make so many sacrifices of comfort, ease and health, for the welfare of those who avail themselves of their services, certainly have a right to expect and require that their patients should entertain a just sense of the duties which they owe to their medical attendants.

§ 2. The first duty of a patient is to select as his medical adviser one who has received a regular professional education. In no trade or occupation do mankind rely on the skill of an untaught artist; and in medicine confessedly the most difficult and intricate of sciences, the world ought not to suppose that knowledge is intuitive.

§ 3. Patients should prefer a physician whose habits of life are regular and who is not devoted to company,

pleasure, or any pursuit incompatible with his professional obligations. A patient should also confide the care of himself and family, as much as possible, to one physician: for a medical man who who has become acquainted with the peculiarities of constitution, habits and predispositions of those he attends, is more likely to be successful in his treatment than one who does not possess that knowledge.

A patient who has thus selected his physician should always apply for advice in what may appear to him trivial cases, for the most fatal results often supervene on the slightest accidents. It is still more importance that he should apply for assistance in the forming stage of violent diseases; it is to a neglect of this precept that medicine owes much of the uncertainty and imperfection with which it has been reproached.

‡ 4. Patients should faithfully and unreservedly communicate to their physician the supposed cause of their disease. This is the more important, as many diseases of a mental origin stimulate those depending on external causes, and yet are only to be cured by ministering to the mind diseased. A patient should never be afraid of thus making his physician his friend and adviser; he should always bear in mind that a medical man is under the strongest obligations of secrecy. Even the female sex should never allow feelings of shame or delicacy to prevent their disclosing the seat, symptoms and causes of complaints peculiar

to them. However commendable a modest reserve may be in the common occurrences of life, its strict observance in medicine is often attended with the most serious consequences, and a patient may sink under a painful and loathsome disease, which might have been readily prevented had timely intimation been given to the physician.

§ 5. A patient should never weary his physician with a tedious detail of events or matters not appertaining to his disease. Even as relates to his actual symptoms, he will convey much more real information by giving clear answers to interrogatories, than by the most minute account of his own framing. Neither should he obtrude upon his physician the details of his business nor the history of his family concerns.

§ 6. The obedience of a patient to the prescriptions of his physician should be prompt and implicit. He should never permit his own crude opinions as to their fitness to influence his attention to them. A failure in one particular may render an otherwise judicious treatment dangerous, and even fatal. This remark is equally applicable to diet, drink and exercise. As patients become convalescent, they are very apt to suppose that the rules prescribed for them may be disregarded, and the consequence, but too often, is a relapse. Patients should never allow themselves to be persuaded to take any medicine whatever, that may be recommended to them by the self-constituted doctors and

doctresses who are so frequently met with, and who pretend to possess infallible remedies for the cure of every disease. However simple some of their prescriptions may appear to be, it oftens happens that they are productive of much mischief, and in all cases they are injurious, by contravening the plan of treatment adopted by the physician.

§ 7. A patient should, if possible, avoid the *friendly visits of a physician* who is not attending him—and when he does receive them, he should never converse on the subject of his disease, as an observation may be made, without any intention of interference, which may destroy his confidence in the course he is pursuing, and induce him to neglect the directions prescribed to him. A patient should never send for a consulting physician without the express consent of his own medical attendant. It is of great importance that physicians should act in concert; for, although their modes of treatment may be attended with equal success when applied singly, yet conjointly they are very likely to be productive of disastrous results.

§ 8. When a patient wishes to dismiss his physician, justice and common courtesy require that he should declare his reasons for so doing.

§ 9. Patients should always, when practicable, send for their physician in the morning, before his usual hour of going out; for, by being early aware of the visits he has to pay during the day, the physician

is able to apportion his time in such a manner as to prevent an interference of engagements. Patients should also avoid calling on their medical adviser unnecessarily during the hours devoted to meals or sleep. They should always be in readiness to receive the visits of their physician, as the detention of a few minutes is often of a serious inconvenience to him.

§ 10. A patient should, after his recovery, entertain a just and endearing sense of the services rendered him by his physician; for these are of such a character, that no more pecuniary acknowledgment can repay or cancel them.

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OF THE DUTIES OF PHYSICIANS TO EACH OTHER, AND  
TO THE PROFESSION AT LARGE.

ART. I.—*Duties for the support of professional character.*

§ 1. Every individual, on entering the profession, as he becomes thereby entitled to all its privileges and immunities, incurs an obligation to exert his best abilities to maintain its dignity and honor, to exalt its standing, and to extend the bounds of its usefulness. He should, therefore, observe strictly such laws as are instituted for the government of its members; should avoid all contumelious and sarcastic remarks relative to the faculty as a body; and while by unwearied diligence, he resorts to every honorable means of en-

riching the science, he should entertain a due respect for his seniors, who have, by their labors, brought it to the elevated condition in which he finds it.

§ 2. It is not in accord with the interests of the public or the honor of the profession that any physician or medical teacher should examine or sign diplomas or certificates of proficiency for, or otherwise be specially concerned with, the graduation of persons who, they have good reason to believe, intend to support and practice any exclusive and irregular system of medicine.

§ 3. There is no profession, from the members of which greater purity of character and a higher standard of moral excellence are required, than the medical; and to attain such eminence is a duty every physician owes alike to his profession and to his patients. It is due to the latter, as without it he cannot command their respect and confidence, and to both, because no scientific attainments can compensate for the want of correct moral principles. It is also incumbent upon the faculty to be temperate in all things, for the practice of physic requires the unremitting exercise of a clear and vigorous understanding; and, on emergencies, for which no professional man should be unprepared, a steady hand, an acute eye, and an unclouded head may be essential to the well-being, and even to the life, of a fellow-creature.

§ 4. It is derogatory to the dignity of the profes-

sion to resort to public advertisements, or private cards, or handbills, inviting the attention of individuals affected with particular diseases—publicly offering advice and medicine to the poor gratis, or promising radical cures ; or to publish cases and operations in the daily prints, or suffer such publications to be made ; to invite laymen to be present at operations, to boast of cures and remedies, to adduce certificates of skill and success, or to perform any other similar acts. These are the ordinary practices of empirics, and are highly reprehensible in a regular physician.

§ 5. Equally derogatory to professional character is it for a physician to hold a patent for any surgical instrument or medicine ; or to dispense a secret *nostrum*, whether it be the composition or exclusive property of himself or others. For, if such *nostrum* be of real efficacy, any concealment regarding it is inconsistent with beneficence and professional liberality ; and if mystery alone give it value and importance such, craft implies either disgraceful ignorance or fraudulent avarice. It is also reprehensible for physicians to give certificates attesting the efficacy of patent or secret medicines, or in any way to promote the use of them.

ART. II.—*Professional services of physicians to each other.*

§ 1. All practitioners of medicine, their wives, and their children while under the paternal care, are entitled to the gratuitous services of any one or more of

the faculty residing near them, whose assistance may be desired. A physician afflicted with disease is usually an incompetent judge of his own case; and the natural anxiety and solicitude which he experiences at the sickness of a wife, a child, or any one who, by the ties of consanguinity, is rendered peculiarly dear to him, tend to obscure his judgment, and produce timidity and irresolution in his practice. Under such circumstances, medical men are peculiarly dependent upon each other, and kind offices and professional aid should always be cheerfully and gratuitously afforded. Visits ought not, however, to be obtruded officiously; as such unasked civility may give rise to embarrassment, or interfere with that choice on which confidence depends. But, if a distant member of the faculty, whose circumstances are affluent, request attendance, and an honorarium be offered, it should not be declined; for no pecuniary obligation ought to be imposed, which the party receiving it would wish not to incur.

ART. III.—*Of the duties of physicians as respects vicarious offices.*

§ 1. The affairs of life, the pursuit of health and the various accidents and contingencies to which a medical man is peculiarly exposed, sometimes require him temporarily to withdraw from his duties to his patients, and to request some of his professional brethren to officiate for him. Compliance with this request

is an act of courtesy, which should always be performed with the utmost consideration for the interest and character of the family physician, and when exercised for a short period, all the pecuniary obligations for such service should be awarded to him. But if a member of the profession neglect his business in quest of pleasure and amusement he cannot be considered as entitled to the advantages of the frequent and long continued exercise of this fraternal courtesy, without awarding to the physician who officiates, the fees arising from the discharge of his professional duties.

In obstetrical and important surgical cases, which give rise to unusual fatigue, anxiety and responsibility, it is just that the fees accruing therefrom should be awarded to the physician who officiates.

ART. IV.—*Of the duties of physicians in regard to consultations.*

§ 1. A regular medical education furnishes the only presumptive evidence of professional abilities and acquirements, and ought to be the only acknowledged right of an individual to the exercise and honors of his profession. Nevertheless, as in consultations the good of the patient is the sole object in view, and this is often dependent on personal confidence, no intelligent regular practitioner, who has a license to practice from some medical board of known and acknowledged respectability, recognized by this Association, and who is in good moral and professional standing in the place

ni which he resides, should be fastidiously excluded from fellowship, or his aid refused in consultation, when it is requested by the patient. But no one can be considered as a regular practitioner or a fit associate in consultation, whose practice is based on an exclusive dogma, to the rejection of the accumulated experience of the profession, and of the aids actually furnished by anatomy, physiology, pathology and organic chemistry.

§ 2. In consultations, no rivalry or jealousy should be indulged; candor, probity and all due respect should be exercised toward the physician having charge of the case.

§ 3. In consultations, the attending physician should be the first to propose the necessary questions to the sick; after which the consulting physician should have the opportunity to make such further inquiries of the patient as may be necessary to satisfy him of the true character of the case. Both physicians should then retire to a private place for deliberation; and the one first in attendance should communicate the directions agreed upon to the patient or his friends, as well as any opinions which it may be thought proper to express. But no statement or discussion of it should take place before the patient or his friends, except in the presence of all the faculty attending, and by their common consent; and no *opinions* or *prognostications* should be delivered which

are not the result of previous deliberation and concurrences.

§ 4. In consultations, the physician in attendance should deliver his opinion first; and when there are several consulting, they should deliver their opinions in the order in which they have been called in. No decision, however, should restrain the attending physician from making such variations in the mode of treatment as any subsequent unexpected change in the character of the case may demand. But such variation, and the reasons for it, ought to be carefully detailed at the next meeting in consultation. The same privilege belongs also to the consulting physician if he is sent for in an emergency, when the regular attendant is out of the way, and similar explanations must be made by him at the next consultation.

§ 5. The utmost punctuality should be observed in the visits of physicians when they are to hold consultation together, and this is generally practicable, for society has been considerate enough to allow the plea of a professional engagement to take precedence of all others, and to be an ample reason for the relinquishment of any present occupation. But as professional engagements may sometimes interfere, and delay one of the parties, the physician who first arrives should wait for his associate a reasonable period, after which the consultation should be considered as postponed to a new appointment. If it be the attending

physician who is present, he will, of course, see the patient and prescribe; but if it be the consulting one, he should retire, except in case of emergency, or when he has been called from a considerable distance, in which latter case he may examine the patient, and give his opinion in *writing* and *under seal*, to be delivered to his associate.

§ 6. In consultations, theoretical discussions should be avoided, as occasioning perplexity and loss of time. For there may be much diversity of opinion concerning speculative points, with perfect agreement in those modes of practice which are founded, not on hypothesis, but on experience and observation.

§ 7. All discussions in consultations should be held as secret and confidential. Neither by words nor manner should any of the parties to a consultation assert or insinuate that any part of the treatment pursued did not receive his assent. The responsibility must be equally divided between the medical attendants—they must equally share the credit of success as well as the blame of failure.

§ 8. Should an irreconcilable diversity of opinion occur when several physicians are called upon to consult together, the opinion of the majority should be considered as decisive; but if the numbers be equal on each side, then the decision should rest with the attending physician. It may, moreover, sometimes happen that two physicians cannot agree in their views

of the nature of a case, and the treatment to be pursued. This is a circumstance much to be deplored, and should always be avoided, if possible, by mutual concessions, as far as they can be justified by a conscientious regard for the dictates of judgment. But in the event of its occurrence, a third physician should, if practicable, be called to act as umpire; and, if circumstances prevent the adoption of this course, it must be left to the patient to select the physician in whom he is most willing to confide. But, as every physician relies upon the rectitude of his judgment, he should when left in the minority, politely and consistently retire from any further deliberation in the consultation, or participation in the management of the case.

§ 9. As circumstances sometimes occur to render a *special consultation* desirable when the continued attendance of two physicians might be objectionable to the patient, the member of the faculty whose assistance is required in such cases should sedulously guard against all future unsolicited attendance. As such consultations require an extraordinary portion of both time and attention, at least a double honorarium may be reasonably expected.

§ 10. A physician who is called upon to consult should observe the most honorable and scrupulous regard for the character and standing of the practitioner in attendance; the practice of the latter, if necessary,

should be justified as far as it can be, consistently with a conscientious regard for truth, and no hint or insinuation should be thrown out which could impair the confidence reposed in him, or affect his reputation. The consulting physician should also carefully refrain from any of those extraordinary attentions or assiduities which are too often practiced by the dishonest for the base purpose of gaining applause, or ingratiating themselves into the favor of families and individuals.

ART. V.—*Duties of physicians in cases of interference.*

§ 1. Medicine is a liberal profession, and those admitted into its ranks should found their expectations of practice upon the extent of their qualifications, not on intrigue or artifice.

§ 2. A physician in his intercourse with a patient under the care of another practitioner, should observe the strictest caution and reserve. No meddling inquiries should be made—no disingenuous hints given relative to the nature and treatment of his disorder; nor any course of conduct pursued that may directly or indirectly tend to diminish the trust reposed in the physician employed.

§ 3. The same circumspection and reserve should be observed when, from motives of business or friendship, a physician is prompted to visit an individual who is under the directions of another practitioner.

Indeed, such visits should be avoided, except under peculiar circumstances; and when they are made, no particular inquiries should be instituted relative to the nature of the disease, or the remedies employed, but the topics of conversation should be as foreign to the case as circumstances will admit.

§ 4 A physician ought not to take charge of or prescribe for a patient who has recently been under the care of another member of the faculty in the same illness, except in cases of sudden emergency, or in consultation with the physician previously in attendance, or when the latter has relinquished the case, or been regularly notified that his services are no longer desired. Under such circumstances no unjust and illiberal insinuations should be thrown out in relation to the conduct or practice previously pursued, which should be justified as far as candor and regard for truth and probity will permit; for it often happens that patients become dissatisfied when they do not experience immediate relief, and, as many diseases are naturally protracted, the want of success in the first stage of treatment affords no evidence of a lack of professional knowledge and skill.

§ 5 When a physician is called to an urgent case, because the family attendant is not at hand, he ought, unless his assistance in consultation be desired, to resign the care of the patient to the latter immediately on his arrival.

§ 6. It often happens in cases of sudden illness, or of recent accidents and injuries, owing to the alarm and anxiety of friends, that a number of physicians are simultaneously sent for. Under these circumstances, courtesy should assign the patient to the first who arrives, who should select from those present any additional assistance that he may deem necessary. In all such cases, however, the practitioner who officiates should request the family physician, if there be one, to be called, and, unless his further attendance be requested, should resign the case to the latter on his arrival.

§ 7. When a physician is called to the patient of another practitioner,\* in consequence of the sickness or absence of the latter, he ought, on the return or recovery of the regular attendant and with the consent of the patient, to surrender the case.

§ 8. A physician, when visiting a sick person in the country, may be desired to see a neighboring patient who is under the regular direction of another physician in consequence of some sudden change or aggravation of symptoms. The conduct to be pursued on such an occasion is to give advice adapted to present circumstances; to interfere no further than is absolutely ne-

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\*The expression, "patient of another practitioner," is understood to mean a patient who may have been under the charge of another practitioner at the time of the attack of sickness, or departure from home of the latter, or who may have called for his attendance during his absence or sickness; or in any other manner given it to be understood that he regarded the said physician as his regular medical attendant.

cessary with the general plan of treatment ; to assume no future direction unless it be expressly desired ; and in this last case, to request an immediate consultation with the practitioner previously employed.

§ 9. A wealthy physician should not give advice *gratis* to the affluent ; because his doing so is an injury to his professional brethren. The office of a physician can never be supported as an exclusively beneficent one ; and it is defrauding, in some degree, the common funds for its support, when fees are dispensed with, which might justly be claimed.

§ 10 When a physician who has been engaged to attend a case of midwifery is absent, and another is sent for, if delivery is accomplished during the attendance of the latter, he is entitled to the fee, but should resign the patient to the practitioner first engaged.

ART. VI.—*Of differences between physicians.*

§ 1. Diversity of opinion and opposition of interest may, in the medical as in other professions, sometime occasion controversy and even contention. Whenever such cases unfortunately occur and cannot be immediately terminated they should be referred to the arbitration of a sufficient number of physicians or a *court-medical*.

§ 2. As peculiar reserve must be maintained by physicians toward the public in regard to professional matters, and as there exist numerous points in medic-

al ethics and etiquette through which the feelings of medical men may be painfully assailed in their intercourse with each other, and which cannot be understood or appreciated by general society, neither the subject-matter of such differences nor the adjudication of the arbitrators should be made public, as publicity in a case of this nature may be personally injurious to the individuals concerned, and can hardly fail to bring discredit on the faculty.

ART. VII.—*Of pecuniary acknowledgments,*

Some general rules should be adopted by the faculty, in every town or district, relative to *pecuniary acknowledgments* from their patients; and it should be deemed a point of honor to adhere to these rules with as much uniformity as varying circumstances will admit.

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OF THE DUTIES OF THE PROFESSION TO THE PUBLIC,  
AND OF THE OBLIGATION OF THE PUBLIC TO  
THE PROFESSION.

ART. I.—*Duties of the profession to the public.*

§ 1 As good citizens, it is the duty of physicians to be very vigilant for the welfare of the community, and to bear their part in sustaining its institutions and burdens; They should also be ever ready to give counsel to the public in relation to matters especially appertaining to their profession, as on subjects of med-

cal police, public hygiene and legal medicine. It is their province to enlighten the public in regard to quarantine regulations ; the location, arrangement and idietaries of hospitals, asylums schools, prisons, and similar institutions ; in relation to the medical police of towns, as drainage, ventilation, etc. ; and in regard to measures for the prevention of epidemic and contagious diseases ; and when pestilence prevails, it is their duty to face the danger and to continue their labors for the alleviation of the suffering, even at the jeopardy of their own lives.

§ 2. Medical men should also be always ready when called on by the legally constituted authorities, to enlighten coroners' inquests and courts of justice on subjects strictly medical—such as involve questions relating to sanity, legitimacy, murder by poisons or other violent means, and in regard to the various other subjects embraced in the science of Medical Jurisprudence. But in these cases, and especially where they are required to make a *post-mortem* examination, it is just, in consequence of the time, labor and skill required, and the responsibility and risk they incur, that the public should award them a proper honorarium.

§ 3. There is no profession by the members of which eleemosynary services are more liberally dispensed than the medical, but justice requires that some limits should be placed to the performance of such good offices. Poverty, professional brotherhood,

and certain of the public duties referred to in the first section of this article, should always be recognized as presenting valid claims for gratuitous services; but neither institutions endowed by the public or by rich individuals, societies for mutual benefit, for the insurance of lives or for analogous purposes, nor any profession or occupation, can be admitted to possess such privilege. Nor can it be justly expected of physicians to furnish certificates of inability to serve on juries, to perform militia duty, or to testify to the state of health of persons wishing to insure their lives, obtain pensions, or the like, without a pecuniary acknowledgement. But to individuals in indigent circumstances, such professional service should always be cheerfully and freely accorded.

§ 4. It is the duty of physicians, who are frequent witnesses of the enormities committed by quackery, and the injury to health and even destruction of life caused by the use of quack medicines, to enlighten the public on these subjects, to expose the injuries sustained by the unwary from the devices and pretensions of artful empirics and impostors. Physicians ought to use all the influence which they may possess, as professors in Colleges of Pharmacy, and by exercising their option in regard to the shops to which their prescriptions shall be sent, to discourage druggists and apothecaries from vending quack or secret medicines,

or from being in any way engaged in their manufacture and sale.

ART. II—*Obligations of the public to physicians.*

§ 1 The benefits accruing to the public, directly and indirectly, from the active and unwearied beneficence of the profession, are so numerous and important that physicians are justly entitled to the utmost consideration and respect from the community. The public ought likewise to entertain a just appreciation of medical qualifications; to make a proper discrimination between true science and the assumptions of ignorance and empiricism; to afford every encouragement and facility for the acquisition of medical education—and no longer to allow the statute books to exhibit the anomaly of exacting knowledge from physicians under a liability to heavy penalties, and of making them obnoxious to punishment for resorting to the only means of obtaining it.

## **Code of Ethics of the American Institute of Hom- oeopathy.**

*Of the Reciprocal  
duties and obliga-  
tions of physicians  
and their patients.*

### *ART. I.—Duties of the physician to the patient.*

§ 1. The physician should hold himself in constant readiness to obey the calls of the sick. He should ever bear in mind that sacred character of his calling and the great responsibility which it involves, and should remember that the comfort, the health and the lives of his patients depend upon the skill, attention and faithfulness with which he performs his professional duties.

§ 2. The physician, in order that he may be able to exercise his vocation to the best advantage of the patient should possess his respect and confidence. These must be acquired and retained by faithful attention to his malady, by indulgent tenderness toward the weaknesses incident to his condition, and by the exercise of a firm but kindly authority. The physician is bound to keep secret whatever he may hear or observe while in the discharge of his professional duties, respecting the private affairs of the patient or his family. And this obligation is not limited to the period during which the physician is in attendance on the patient. The patient should be made to feel that he has, in his physician, a friend who will guard his secrets with scrupulous honor and fidelity.

§ 3. The physician should visit his patient as often as may be necessary to enable him to acquire and keep a full knowledge of the nature, progress, changes and complications of the disease, and to do for the patient the utmost of good that he is able. But he should carefully avoid making unnecessary visits, lest he render the patient needlessly anxious about his case, or expose himself to the charge of being actuated by mercenary motives.

§ 4. The physician should not give expressions to gloomy foreboding respecting the patient's disease, nor magnify the gravity of the case. Bearing in mind that the almost infinite resources of nature, he should be cheerful and hopeful, both in mind and manner. This will enable him the better to exercise his faculties and apply his knowledge for the patient's benefit, and will inspire the patient with confidence, courage and fortitude, which are the physician's best moral adjuvants.

But it is the physician's duty to state the true nature and prospects of the case, from time to time, to some judicious friend or relative of the patient, and to keep this person fully informed of its changes and probable issue ; and if the patient himself requests the physician to disclose to him the nature and prognosis of his disease, it is his duty to state tenderly, but frankly, the whole truth,—provided the patient be of sound mind, and strong enough to receive the disclosure with-

out serious injury. The patient has a right to know the truth. If, moreover, facts within the physician's knowledge lead him to believe that it is of great importance, in relation to the patient's affairs, that he should be warned of the approach of death, it is the physician's duty to reveal to the patient's nearest friend or to the patient himself, the true state of the case, and the importance of timely action.

§ 5 Whether the case proceed favorable, or become manifestly incurable, it is the physician's duty to continue his attendance faithfully and conscientiously so long as the patient may desire it. He is not justified in abandoning a case merely because he supposes it incurable.

§ 6. As the patient has an undoubted right to dismiss his physician for reasons satisfactory to himself, so, likewise, the physician may, with equal propriety, decline to attend patients, when his self-respect or dignity seem to him to require this step; as, for example when they persistently refuse to comply with his directions.

§ 7. In difficult or protracted cases, consultations are advisable. They tend to increase the knowledge, energy and confidence of the physician, and to maintain the courage of the patient. The physician should be ready to act upon any desire which the patient may express for a consultation, even though he may not himself feel the need of it. Nothing is so likely to

maintain the patient's confidence as alacrity in this respect. Moreover, such a course is but justice to him, for he has an indisputable right to whatever aid or counsel he may think likely to be of some service to him.

§ 8. The intimate relations into which the physician is brought with his patient give him opportunity to exercise a powerful moral influence over him. This should always be exerted to turn him from dangerous or vicious courses towards a temperate and virtuous life. The physician is sometimes called to assist in the practices of questionable propriety, and even of a criminal character. Among these may be mentioned the pretense of disease, in order to evade services demanded by law, as jury or military duty; the concealment of organic disease or of morbid tendencies, in order to secure favorable rates of life insurance, or for deception of other kinds; and especially the procurement of abortion when not necessary to save the life of the mother. To all such propositions the physician should present an inflexible opposition. It is his duty, in an authoritative but friendly manner, to explain and urge the nature, illegality and guilt of the proposed action, and to use every effort to dissuade from it, and to strengthen the patient's virtue and sense of right. The physician should be aware of the frequency of criminal abortion, and of the different methods employed for it, and should take every oc-

casion to warn those who may be tempted to resort to it. In no case should the physician induce abortion, or premature labor, without a previous consultation with the most experienced practitioners attainable, nor without the most clear and imperative reasons.

ART. II.—*Duties and obligations of patients to their physician.*

§ 1. Physicians are required, by nature of their profession, to sacrifice comfort, ease, and even health for the sake of their patients. Patients should reflect upon this, and should understand and remember that they have corresponding duties and obligations towards their physician.

§ 2. The patient should select a physician in whose knowledge, skill and fidelity he can place implicit confidence; whose habits of life are regular and temperate, and whose character and demeanor are such that he can regard him as a personal friend. He must be able to confide in him freely. And the physician should not be changed for light reasons. A physician thoroughly acquainted with the constitutions, temperaments and tendencies of a family can the more successfully treat them.

§ 3. The patient should always consult his physician as early as possible after he has discovered that he is ill. A disease that is trifling at its onset may grow formidable through neglect. The physician

should be regarded as a confidential adviser, who on being early consulted, may prevent sickness.

§ 4. The patient should faithfully and unreservedly state to his physician the supposed cause of his malady, and tell him everything that may have a bearing upon its nature. Since the physician is under the strongest obligations to secrecy, the patient should not allow consideration of delicacy, modesty or pride to prevent an entirely frank statement of his case, and candid and full replies to interrogatories.

§ 5. The patient should implicitly obey his physician's injunctions as regards to diet, regimen and medical treatment. If he deviates from these directions, he cannot hold the physician to a full responsibility in the case ; and, further, by a partial obedience he incurs some personal risk, since in the treatment of diseases all parts of the physician's advice are made to harmonize, and each is dependent on the others and may be unsafe without the co-incidence of the others ; moreover, he does the physician an undeserved, and often a serious, wrong. If the patient has not sufficient confidence in his physician, and respect for him, to follow his directions, it were better for him frankly to say so, and to employ another in whom he can confide.

The patient should never allow himself, while under a physicians treatment, to take other medicines than those prescribed by him. He would, by so doing,

incur a serious risk of taking medicines that are incompatible with each other. If desirous of trying any other mode of treatment, it would be much better frankly to state the fact to his physician, and ask his advice.

§ 6. The patient should, if possible, avoid receiving friendly visits of a physician other than the one under whose charge he is. When he receives such visits, he should avoid conversation on the subject of his disease; for an accidental observation might give him false impressions respecting his disease, or destroy his confidence in the treatment he is pursuing. He should never send for a consulting physician without the express consent of his own medical attendant; for physicians can act together for the advantage of their patient only when they act harmoniously. Nor should he, by a secret appointment, constrain his medical attendant to meet another physician with whom he might not be willing to consult; but the patient has an undoubted right to have the opinion of any physician whom he may desire, upon his case. His proper course is, to request his medical attendant to arrange a consultation, and frankly state his desire for the physician whom he may prefer. If his medical attendant decline the consultation, it is then for the patient to determine whether he will insist, and thus dismiss his medical attendant, or whether he will de-

fer to the judgment of his own physician. And the patient has a right thus to choose.

§ 7. If the patient wishes to dismiss his physician, he should, in justice and in common courtsey, state his reasons, and if possible, in a friendly manner. To dispense with the services of a physician need not, of necessity, change the social relations of the parties.

§ 8. The patient should, when practicable, send for the physician in the morning, before his usual hour for leaving home. He will, by so doing, secure his earlier attendance, and will enable him the better to apportion his time so as to do justice to all his calls and engagements. He should call on his physician during his office hours only, and should avoid disturbing him in hours devoted to meals, rest and sleep. And in receiving his physician's visits he should avoid compelling him to wait, even for a few minutes. The aggregate of petty detentions, while the patient is making some needless preparation to receive the physician, amounts to a serious waste of valuable time.

#### OF THE DUTIES AND OBLIGATIONS OF PHYSICIANS TO THE PROFESSION AND TO EACH OTHER.

ART. I.—*Duties to the profession.*

ART. II.—*Professional services of physicians to each other.*

ART. III.—*Duties of physicians as regards vicarious offices.*

[ In these three Articles the language used is almost *verbatim et literatim* to that used in the Code of the American Medical Association, and hence we herewith omit them.—H. G. B.]

ART. IV.—*Duties of physicians in regard to consultation.*

§ 1. A complete medical education, of which the diploma of a medical college is the formal voucher, furnishes the only presumptive evidence of professional acquirements and abilities. But the annals of the profession contain the names of some who, not having the advantage of a complete medical education, became nevertheless, through their own exertions and abilities, brilliant scholars and successful practitioners. A practitioner, therefore, whatever his credentials may be, who enjoys a good moral and professional standing in the community, should not be excluded from fellowship, nor his aid rejected, when it is desired by the patient in consultation. No difference in views on objects of medical principles or practice should be allowed to influence a physician against consenting to a consultation with a fellow practitioner. The very object of a consultation is to bring together those who may, perhaps, differ in their views of the disease and its appropriate treatment, in the hope that, from a comparison of different views, may be derived a just estimate of the disease and a successful course of treatment.

No tests of orthodoxy in medical practice should be applied to limit the freedom of consultations. Medicine is a progressive science. Its history shows that what is heresy in one century may, probably will, be

orthodoxy in the next. No greater misfortune can befall the medical profession than the action of an influential association or academy establishing a creed or standard of orthodoxy or "regularity." It will be fatal to freedom and progress in opinion and practice. On the other hand, nothing will so stimulate the healthy growth of the profession, both in scientific strength and in the honorable estimation of the public, as the universal and sincere adoption of a platform which shall recognize and guarantee: 1. A truly fraternal good-will and fellowship among all who devote themselves to the care of the sick. 2. A thorough and complete knowledge, however, obtained, of all the direct and collateral branches of medical science—as it exists in all sects and schools of medicine—as the essential qualification of a physician. 3. Perfect freedom of opinion and practice, as the unquestionable prerogative of the practitioner, who is the sole judge of what is the best mode of treatment in each case of sickness entrusted to his care. The physician may, with propriety, decline to meet a practitioner of whose inimical feelings towards himself or of whose general unfairness in consultations he is satisfied. But in such a case, he should explain to the patient his reasons; and if the patient desire the opinion of the practitioner objected to, the family physician may withdraw from the case and allow the other to be sent for. But, in justice to the latter, the state of affairs should be ex-

plained to him at the time he is requested to visit the patient.

§ 2. The utmost punctuality should be observed in the visits of physicians when they are to hold consultation together; and this is generally practicable for society allows the plea of professional engagements to excuse the neglect of all others, and to be a valid reason for the relinquishment of any present occupation. But, as professional engagements may sometimes interfere and delay one of the parties, the physician who first arrives should wait for his associate a reasonable period of time, after which the consultation should be considered postponed to a new appointment. If it be the attending physician who is present, he will, of course, see the patient and prescribe; but if it be the consulting physician, he should retire without seeing the patient, except in cases of emergency, or when he has been called from a considerable distance, in which case he may examine the patient, and give his opinion in writing and under seal, to be delivered to the attending physician.

§ 3. In consultations, no rivalry or jealousy should be indulged in. Candor, probity and all due respect should be exercised towards the physician in charge of the case. If the consulting physician cannot agree with him respecting the nature and proper treatment of the case, the physicians should state this fact to the

patient or his nearest friend, both physicians being present at the time, and should request him to select the one whom he has the most confidence. But, if they agree sufficiently to take joint charge of the case, the consulting physician must justify and uphold, so far as he can conscientiously do so, the practice of his associate, and must abstain from any hints, insinuations or actions which might, in any way, impair the confidence which the patient reposes in him, or affect his reputation. He must refrain from any extraordinary attentions or assiduties, calculated to ingratiate himself in the patient's favor and to supplant his associate.

§ 4. In consultations, the attending physician should first put the necessary questions to the patient. After this, the consulting physician should make such additional inquiries and examinations as may be needed to satisfy him of the true nature of the case. But he should avoid making a parade of examining the patient more thoroughly than had been done before; rather suggesting to the attending physician where this is possible, to make whatever examinations he desires, than making them himself. Both physicians should then retire to a private room for deliberation.

§ 5. In consultations the attending physician should deliver his opinion first; and when there are several consulting physicians, they should express their opinions in the order in which they have been called in. Should an irreconcilable diversity of opin-

ion occur, when more than two physicians meet in consultation, the opinion of the majority should be regarded as decisive ; but, if the number be equal on each side, the decision should rest with the attending physician. If two physicians in consultation, cannot agree, they should call in a third to act as umpire. If this be not practicable, the patient must be requested to select the physician in whom he is most willing to confide. The physician who is left in the minority should, without any ill feeling, retire from the consultation and from any farther participation in the management of the case : and, in justice to the physician thus retiring, the fact of his difference from his associates should, in the presence of all the physicians attending, be explained to the patient, as his reason for withdrawing from the case.

§ 6. The attending physician should communicate to the patient or his friends the directions agreed upon in the consultation, as well as any opinion which it may be thought proper to express. But no statement or discussion should take place before the patient or his friends, except in the presence of all the physicians attending, and by their common consent. And no opinions or prognostications should be delivered, which are not the result of previous deliberation and concurrence. No decision arrived at in consultation is to be regarded as restraining the attending physician from making such variations in the treatment as any subse-

quent change in the case may demand. But such variation and the reasons for it ought to be carefully noted at the time, and detailed at the next meeting in consultation. The same privilege belongs also to the consulting physician, if he is sent for in an emergency when the attending physician is out of the way; and similar explanations must be made by him at the next meeting.

§ 7. Sometimes a special consultation is desirable in case in which the continued attendance of two physicians might be objectionable to the patient.. The consulting physician, in such a case, should sedulously avoid all further unsolicited attendance. Such consultations require an extraordinary outlay of time and attention, and at least a *double honorarium* may be reasonably expected.

§ 8. The consulting physician cannot, with propriety, take exclusive charge, at any time, of the patient in whose case he has been called in consultation, without the consent of the attending physician, except in cases provided for by the third sentence of section 3, and by the fourth sentence of section 5, of this article.

#### ART. V.—*Duties of physicians in cases of interference.*

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[The remainder of the Homœopathic Code is almost verbatim that of the American Medical Association Code following Art. V. page 128, and is therefore omitted. Sec. 4, page 134, is, however, not in the Homœopathic Code.—B.]

**Code of Ethics of the  
National Eclectic Medical Association.**

ARTICLE 1. The interests and rights of medical men are as dear to them as are those of any

other class of citizens in this Republic. They are entitled by the Constitution of this great Union to the same freedom and privileges in moral, social, political and civil life, as are individuals pursuing any other vocation; and any associations or rules which would deprive them of the least portion of these rights and privileges are unwarranted usurpations, contrary to the spirit and intent of our American government and consequently, of no force in law or custom.

ARTICLE 2. The common rules and maxims of morality which are enjoined in the Bible, and have been recognized by the wise and virtuous at all times, and in every civilized country, are comprehensive enough in their scope, and sufficiently dignified in form, to meet all the contingencies and emergencies which, in a moral point of view, are likely to arise in the transaction of business and the interchange of thought and sentiment between man and man.

## THE PHYSICIAN;

## His Relation to the Law

## AND THE

## Legal Rules Concerning the Collection of His Fees.

## PART IV.—MEDICAL PRACTICE ACTS.

*Legal Requirements for the Practice of Medicine in each State and Territory of the United States, with additions to the latest published list of the I. B. of H. Medical Laws to date.*

In the following pages will be given the *text* of the laws of the various States and Territories in which the practice of medicine within the bounds of each is regulated by legislative enactments. The *gist* of the law in each case is given, for, it is generally considered that a brief, plain statement of the law, as applied to any point in question is more desirable than unimportant sections and clauses relating to methods of organization, objects or quorums.

In giving a resumé of the legal requirements for medical practice in each State and Territory, we have endeavored to give the most recent laws obtainable. There may have been late changes in some, but it is presumed that the appended list of the *text* of the law

will be found reliable. Additions have been made to the published list, (I. B. of H., Dec. 31, 1892,) which, with corrections to date, is as follows:

..

*Alabama.* A certificate of successful examination by the State, or county board of medical examiners. Diplomas confer no right to practice. Act of February 18, 1891.

..

*Arizona.* Registry with a county recorder, of an unrevoked, uncanceled "diploma, regularly issued by a medical college properly and lawfully organized under the laws of the State wherein said college shall be located."

..

*Arkansas.* A certificate of successful examination by the State (or a county) Board of Medical Examiners. Diplomas confer no right to practice.

..

*California.* A certificate issued on the diploma of a college in good standing or upon a successful examination by one of the State Boards of Medical Examiners,—regular, homœopathic or eclectic.

..

*Colorado.* Similar to California, except that there is but one State Board of Examiners.

..

*Connecticut.* A certificate of registration of the diploma of a college "recognized as

reputable by any one of the chartered medical societies of the State," regular, homœopathic eclectic; or a certificate of satisfactory examination by a committee appointed for the purpose by the State Board of Health.

..

A certificate based upon the registration of a diploma from "a respectable medical college," or upon "a full and impartial examination by the State Board of Medical Examiners."

..

Nominally the indorsement of a diploma or an examination by a committee of the district medical society; practically no requirement.

..

A certificate of satisfactory examination by the State (or a district) Board of Medical Examiners. Diplomas confer no right to practice.

..

The registration of a diploma from any "incorporated medical college, medical school or university." The clerks of the Superior courts are the sole judges of the value of the diploma as evidence of fitness for medical practice.

..

Registration of a Diploma at a County seat. Act in operation since 1887.

A certificate issued by the State  
*Illinois.* Board of Health upon the diploma of  
 a legally chartered medical institution  
 in good standing as determined by the Board; or upon  
 a satisfactory examination by the Board.

The registration, in a county clerk's  
*Indiana.* office, of a diploma " from some repu-  
 table medical college. "

*a*, Cherokee Nation: An examina-  
*Indian* tion by the Board of Medical Exami-  
*Territory.* ners. *b*, Choctaw Nation: A certi-  
 cate based upon a diploma or upon an  
 examination by the Board of Medical Examiners. *c*,  
 Creek Nation: Payment of \$25 annually as a license  
 fee.

Law similar to that of Illinois. In  
*Iowa.* force April 9, 1886.

The registry of a diploma from "some  
*Kansas.* reputable school of medicine," or of a  
 certificate of qualification from some  
 state or county medical society.

A certificate issued by the State  
*Kentucky.* Board of Health or presentation of a  
 diploma from reputable and legally  
 chartered medical college. Approved April 10, 1893.

The record of a diploma from "any  
*Louisiana.* medical institution of credit and re-  
spectability" after indorsement by the  
State Board of Health.

No existing laws governing Medical  
*Maine.* Practice. An act was passed in 1887,  
to regulate the practice of medicine but  
was vetoed by the Governor.

A certificate issued upon a satisfac-  
*Maryland.* tory examination by the State Board  
of Medical Examiners. Diplomas con-  
fer no right to practice.

*Massachusetts.* Has no law.

The record of a diploma in a county  
*Michigan.* clerk's office.

A certificate is issued by the State  
*Minnesota.* Board of Medical Examiners. Diplo-  
mas confer no right whatever. In  
force July 1st, 1887.

A certificate issued upon an exami-  
*Mississippi.* nation, by the State Board of Health.  
Diplomas confer no right to practice.

Same as Illinois. In force July 1,  
*Missouri.* 1883.

Ten years of practice. A certificate  
*Montana.* upon the diploma of a College "in  
 good standing", or upon an examination by the State Board of Medical Examiners. In  
 force February 28, 1889.

A certificate issued by the State  
*Nebraska.* Board of Health upon the diploma of  
 a "legally chartered medical school or  
 college in good standing," as defined in Section 8, of  
 the Act of July, 1891.

The record of a diploma from "some  
*Nevada.* regularly chartered medical school."  
 Approved January 28, 1875.

*New*  
*Hampshire.* No legal requirement.

A license issued upon a successful examination by the State Board of Medical Examiners. Diplomas confer no  
*New Jersey.* right to practice.

A certificate upon the diploma of a  
*New Mexico.* legally chartered medical institution in  
 good standing, or on an examination  
 by the Territorial Board of Medical examiners.

A license issued upon a successful examination by one of the State Board of  
*New York.*

Medical Examiners—regular, homœopathic, eclectic. Diplomas confer no right to practice.

A license issued upon a successful  
*North Carolina.* examination by the State Board of  
Medical Examiners. Diplomas confer no right to practice.

Similar to the law of North Carolina.  
*North Dakota.*

A certificate issued by the State Board  
*Ohio.* of Registration and Examination upon  
a diploma recognised by the Board; ten  
years practice; or upon a successful examination  
before the Board.

A license issued by the Superintendent of Public Health upon a medical  
*Oklahoma.* diploma or after examination.

A certificate on the diploma of a college “in good standing,” or after examination by the State Board of Medical Examiners.  
*Oregon.*

A license issued after examination  
*Pennsylvania.* before one of the State Boards of  
Medical Examiners.—Act of May 18,  
1893. Takes effect March 1, 1894. Diplomas will  
thereafter confer no right to practice.

Has no legal requirement.  
*Rhode Island.*

A certificate of verification of the diploma of a reputable medical college.

*South*

*Carolina.* The act of December 24, 1890, abolished the State Board of Medical Examiners, created by the act of 1888, and under which the diploma conferred no right to practice.

A license issued by the State Board of Health after examination. Diplomas confer no right to practice.

*South Dakota.*

A license on the diploma of a college in "good standing" or after examination by the State Board of Medical Examiners.

*Tennessee.*

A license issued after examination by a District Board of Medical Examiners. Diplomas confer no right to practice.

*Texas.*

A license issued by the Territorial Board of Medical Examiners after Examination. Diplomas confer no right to practice.

*Utah.*

The registry of a diploma indorsed by one of the Boards of Medical Censors or a certificate of examination

*Vermont.*

by one of the Boards.

*Virginia.* A license issued after examination by the State Board of Medical Examiners. Diplomas confer no right to practice.

∴

*Washington.* Law similar to the law of Virginia.

∴

*West Virginia.* A license on the diploma of a reputable college, or after examination by the State Board of Health.

∴

*Wisconsin.* The indorsement of a medical diploma by the Censors of either of the State or county medical societies.

∴

*Wyoming.* The record of a diploma with a registrar of deeds.



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